LAWS

OF THE

STATE OF ENDIANA,

PASSED AND PUBLISHED, AT THE SECOND SESSION

OF THE

GENERAL ASSEMBLY,

IN DECEMBER, IN THE

HELD AT CORTDON, ON THE FIRST MONDAY IN DECEMBER, IN THE

PRAR ONE THOUSAND EIGHT HUNDRED AND SEVENTREN.

(BY AUTHORITY.)

CORYDON:

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PRINTERS TO THE STATE.

1318.

LAWS

OF THE

STATE OF INDIANA.

CHAPTER I.

AN ACT Organizing the Supreme Court and regulating the practice therein, Approved December the 23d, 1816, continued in force, revised, re-enacted and republished with amendments.

APPROVED-January 12, 1818.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That the Su- Court to conpreme Court, shall consist of three Judges, sist of three any two of whom shall be sufficient to hold a judges. court; who shall be commissioned by the Governor; which court shall be a court of record, to all intents and purposes.

Sec. 2. Every person so commissioned, before he enters upon the duties of his office, shall take the following oath or affirmation, Oath of ofto wit: I, A B, do solemnly swear or affirm, fice. that I will administer justice, without respect to persons, and I will faithfully and impartially discharge and perform, all the duties incumbent on me, as a Judge of the Supreme Court of the State of Indiana; according to the best of my abilities and understanding, agreeably to the constitution and laws of this State; "So help me God." Omitting in the case of an affirmation, the words "So help me God;" which oath or affirmation may be administered by any justice of the peace, or other person legally authorized to administer oaths; a certificate of which said oath, shall be filed

in the clerk's office, of the said Suprema Court ; and also, in the office of the Secretary

of State.

Sec. 3. The said Court shall be holden twice in every year, namely, on the second Monday in the months of May and November, in the court house at the seat of government; and the term commencing on the second Monday of May, shall be called the May term, and the term, commencing on the second Monday of November, shall be called the November term; each term, shall continue for the space of thirty days; unless the business before them shall be sooner dispatched; but the said Court shall have power, to prolong their session, beyond the term; for expediting the business before them, if they shall see cause.

Clerk appointed.

where held.

To take the oath of office.

Bond to be recorded.

may Who prosecute thereon.

Sec. 4. The Supreme Court shall appoint the clerk of said Court, who, before he enters upon the duties of his office, shall take the following oath, to wit : I, A B, do solemuly swear, or affirm (as the case may be) that I will faithfully execute, to the best of my abilities, the office of Clerk of the Supreme Court; according to law, to be administered by either of the Judges of said Court ; and shall give bond to the Governor, for the time To give bond being, and his successors in office, in the penalty of five thousand dollars, with two securities, at least to be approved of by the said Court, conditioned, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and orders of the said Court; which bond shall be recorded in the said Supreme Court and filed in the office of the Secretary of State; and shall not be void upon the first recovery, but may be put in suit from time to time, at the instance and for the benefit, of any party or parties injured ; until the whole of the penalty expressed in such bond, shall be recovered thereon.

SEC. 5. The Supreme Court shall annual-

ly appoint one of the judges thereof, to inspect Clerk's office the clerks office of said Court, and to report, to be inspecto the next term of the said Court, the condition in which he found the records and papers, which report shall be recorded.

Sec. 6. The sheriff of the county, in which the Supreme Court shall be held, shall be ad- Who shall judged an officer of the said Court, and shall act as officer attend the same with a sufficient number of of the court. deputies accordingly; and the said sheriff and his deputies, shall be bound to perform the same duties in relation to the business of the The duty of Supreme Court, as they shall by law, be di- the officer rected and required to perform, in relation to thereof. the Circuit Courts of this State, which shall or

may be be eafter organized.

Sec. 7. The Supreme Court shall have appellate jurisdiction in all cases. both in law and equity, co-extensive with the limits of the state, except in such cases, as shall be here- the court. after excepted; and in order to carry the same into effect, the said Court in term time, or any Judge or Judges in vacation, shall have power, and are hereby anthorized, to issue all kinds of writs, orders and process according to the course of the Common Law, and the usages of Courts : Provided the same shall not be inconsistent with the constitution and laws of this state : Provid d however, that nothing In criminal berein contained, shall be so construed as to cases, no apauthorize an appeal from an inferior Court, to peal nor shall the Supreme Court in any criminal case ; nor ror operate shall any writ of error operate as a superse- as a supersedeas in a criminal case.

Sec. 8. Until it shall be otherwise provived for by law, the fees and compensation, to Officers and the several officers of the said Supreme Court, and the allowance to witnesses, shall be the fces. same as shall be allowed in similar cases, in the Circuit Courts; and shall be collected and accounted for in the same manner; and for the services of the sheriff, which are unlike those in the Circuit Courts, a reasonable com-

Appellate ju-

deas.

pensation shall be made by the parties, to be determined by the said Supreme Court according to the equity and justice of the case, having regard to the fees allowed for services most similar to those, in the said Circuit Courts.

shall appoint a per son to act,

Sec. 9. In all cases where the sheriff or his deputy attending the Supreme Court shall sheriff is in- be interested or shall not be an indifferent perterested the son; the duty of such sheriff shall be performed, by such disinterested or indifferent person as the Supreme Court shall appoint, and the person so appointed, is hereby authorized to perform the same.

uance for want of a quo Eum.

Execution

turnable.

SEC. 10. There shall be no discontinuance of any suit process, matter or thing, returnable to or depending in the Supreme Court, al-No discontin- though a quorum of Judges shall fail to attend, at the commencement or any other day of the term; but if a majority of them shall not attend, any Judge of said Court or sheriff attending the same, may adjourn the said Court from day to day, for ten days succesively; and if a quorum shall not attend on the eleventh, or having attended one day, shall fail to attend on a subsequent day of the term, the Court shall adjourn until Court in course.

SEC. 11. The executions to be issued from the Supreme Court shall be the same, as those, which may be by law directed to be issued, and when re- from the Circuit Courts hereafter to be organized, and the return days shall be appointed by said Court.

process.

Sec. 12. The Supreme Court shall have rower of the power to direct the writs, summonses, procourt, as to cess, forms and modes of proceedings to be issued, observed and pursued by the said Court, and shall make rules for that purpose, to be entered upon the records thereof, not inconsistent with the constitution and laws of this state.

SEC. 13. Writs of error issuing from and appeals made to the Supreme Court, shall extend to all judgments and decrees, given by

any of the inferior Courts of record, of the Judgments of late Indiana Territory, or which may be given former infeby any of the inferior Courts of this state, ex- how brought cept as herein after excepted, subject to such into this regulations and restrictions, as may be pre- courts scribed by law: Provided however, that no judgment or decree shall be reversed, set aside or made void, by the said Court, for the want of supposed jurisdiction in the said former Circuit Court.

SEC. 14. In appeals and writs of error, the Rules to be following rules shall be observed: no appeal observed in shall be granted from the judgment or decree appeals and of an inferior court, to the supreme court, un- writsoferror. less such judgment be final and amounts, exclusive of costs, to fifty dollars, or relates to a franchise or freehold. Every appeal shall be prayed for at the time of rendering such judgment, sentence or decree. The person appeal- Appellant to ing shall by himself, or some responsible per- give bond. son on his behalf, in the office of the clerk of the court, from whence the appeal is prayed, give bond and sufficient security, to be approved of by the said court, and within a time to be fixed by the court, to the appellee for the due prosecution of his appeal. The penalty of the said bond shall be in a reasonable sum: in the discretion of the court.

SEC. 15. In all appeals and writs of error, Plaintiff in error or appelthe transcript of the record shall be transmit- lant, to transted, by the plaintiff in error or appellant to the mit a copy of clerk of the supreme court, within thirty days the record at most, after the said appeal has been taken, within 30 or writ of error sued out, and shall not be there- clerk. after received, unless for good cause shewn to the satisfaction of the court, further time be given. The appellee or defendant in errormay demand a trial When appel. of such appeal or writ of error, during the term to lee may dewhich the same shall be made returnable, and mand trial. the court shall not continue the same to another term, without the consent of the appellee or defendant in error; unless upon good and sufacient cause; and no pleadings shall be requi-

days to the

shall answer.

red on writs of error, except an assignment of errors by the plaintiff, to be filed on or before the first day of the term, to which the writ of error is returnable, and an answer thereto by When defen- the defendant, to be made at such time, as the dant in error court shall direct; but the same shall stand for trial at the term to which they may be returned.

SEC. 16. No writ of error shall operate as a supersedeas, unless the supreme court, or some judge thereof in vasation, after inspecting the errors, which shall be assigned, upon the trauscript of the record, shall order the same to be made a supersedeas. That in such case the clerk issuing the said writ, shall endorse on the said writ of error, that it shall be a supersedeas, and as such be obeyed accordingly. And it shall also be necessary, before a writ of error shall operate as a supersedeas, that bond to be approved of by the clerk of the said supreme court, be given, in like manner, and with the conditions, and under the same penalties as is provided in cases of appeal, except that the bond may be given in the clerk's office in the court below, in such manner as the supreme court or judge may direct. Writs of error ordered by a shall, upon the demand of the person applying for the same, be issued as matter of right: except that no appeal shall be taken to the supreme court, from the judgment of the circuit court or any other inferior court, which may or shall be hereafter organized, on a judgment reversing or confirming the judgment of any justice of the peace; nor shall any writ of error be issued from the said supreme court, to reverse the same; that the clerk of the said court, at the time of issuing a writ of error, shall issue a summons directed to the sheriff of the county in which such defendant in error shall reside, requiring him to summon the said defendant or defendants to appear on the first day of the next term of the said court, to answer such error or errors, and if the same shall, by the return of the sheriff or other officer, appear to

have been executed, ten days before the return day thereof, the same shall stand for trial, agreeably to the provisions of the fifteenth sec- If the defention of this act. If the same shall be returned dant be a nonnot executed, or if by any other satisfactory resident noproof it shall appear to the court, that such de- tice to begivfendant or defendants are not inhabitants of en. this state, the said court may order, that notice of the pending of such wril of error, be published in some one of the public newspapers, for three weeks successively; after which the same shall be proceeded upon in all respects as if process had been returned executed.

SEC. 17. In all cases where the plaintiff in error shall obtain a transcript of the record, from the clerk of the inferior court, certified by When an ensuch clerk as being a full and complete trans- dorsement of cript of the record in the suit or action named, and sealed with the judicial seal of the said record shall court, for whom he acts as clerk; it shall be supercede a lawful for such plaintiff to assign upon the back writ of error. of the record, or some paper attached thereto, all the errors upon which he intends to rely, in order to reverse the said judgment ordecree, and file the same with the clerk of the supreme court who shall receive the same and endorse upon it when filed, and that in such case it shall not be necessary for the saidclerk to issue a writ of error to the court below, to send up the said record, but shall issue a summons, or summonses to the defendants in error, in the same manner as if the said writ had issued, and the said Supreme Court shall proceed thereon, and determine the same in all respects as if a writ of error had issued.

SEC. 18. The plaintiff in error, except in Plaintifftoas. cases of wills, shall assign errors upon mat- sign errors in ters of law only, arising upon the face of the proceedings. In cases of wills, the plaintiff in error may assign errors upon matters of fact as fact. well as upon matters of law, to be determined by the court. If the judgment or decree be affirmed in the whole, the appellant shall pay

Errors in

Damages on affirmance.

judge.

Nowrit of er-

ror to operate

as a superse-

deas, unless

When costs to be divided.

Court mayissue execution or remand the cause.

judgment beno farther than to the first error.

Suit to be sent back withithe opinion of the court.

E. F. G.

to the appellee, a sum not exceeding ten per centum, at the discretion of the Court, on the sum due thereby, besides the costs, upon the On reversal, original suit and appeal. If the judgment or decree be reversed in the whole, the appelled shall pay to the appellant, such costs as the Court in their discretion shall award; where the judgment or decree shall be reversed in part and affirmed in part: the costs of the ori ginal suit and appeal, shall be apportioned between the appellant and appellee in the discretion of the Court. The Supreme Cour shall, in case of a partial reversal, give such judgment or decree as the inferior court ough to have given. On appeals and writs a error it shall be lawful for the Supreme Court, to issue execution, or remit the cause to the inferior court, in order that an execution may be there issued, or that other preceedings may be had thereon. In all cases where any judgment or decree of any inferior court, shall be reversed by the Supreme Court, for or on aclow reversed count of any error in law or in fact, which shall or may have taken place in the proceedings, management and progress of any such suit, the said court shall not reverse thesaid proceedings any further than to the first error, including the same, which shall have been committed: And the said suit shall be sent back to the Court from whence it came, together with the epinion of the said Supreme Court, with directions for the same to commence from the last regular proceedings had thereon, and proceed to trial and judgment, in the same manner as if no proceedings had been had in the Superior Court, taking the opinion of the Supreme Court as their guide; and the party having committed the first error shall pay to the opposite party such costs as the court shall order and direct.

Sec. 19. When any writ of error shall have been made a supersedeas, and the judgment or affirmance of decree so superseded be affirmed, in part, or in

whole, the defendant in error shall be entitled a writ of erto the same per cent. in damages which is al. ror made a lowed by law in cases of appeals. A writ of supersedeas. error shall not be brought after the expiration Limitations of five years from the passing the judgment or of writs of decree complained of; except such person or error with person shall have been at the time such judgment or decree was made, an infant, feme covert, non com pos mentis, imprisoned or out of the limits of the United States on public business; in which case the time of such disability shall be excluded from the computation of the said five years.

SEC. 20. No judgment after the verdict of twelve men shall be stayed or reversed, where Judgment on it shall appear to the Court, that the merits of the merits the case have been fairly and falls and falls are the merits of neither staythe case have been fairly and fully decided by ed nor reverby such verdict; and that such verdict and the sed. judgment thereon, might be effectually pleaded in bar to another action brought for the same cause: But nothing herein contained shall extend to cure or affect any errors in the judgment of the court, before whom such cause may be tried, in questions of law which may have arisen, or been brought up, before them by the pleadings therein or otherwise, if the same appear upon the record, by bill of exceptions, or demarrer to evidence. Whenev- When court er the Supreme Court shall be divided in opin- are divided in ion, on hearing any appeal or writ of error, the opinion suit suit shall be continued until the next term, and continue for

SEC. 21. The Clerk of the Supreme Court shall carefully preserve the transcript of re- Clerk's duty. cords, certified to his Court, with the bonds for prosecution, and all papers relative to them; and other suits depending therein, docketing them in the order. he may receive them that they may be heard in the same coarse; unless the Court, for good cause to them shewn. order any to be heard out of its turn. The

if then the Court are still divided, the judg-

ment or decree appealed from shall be affirm-

ed.

proceedings of every day during a term, shall be drawn up at full length, by the Clerk against the next sittings of the Court, and such corrections as may be necessary being first made therein, shall be signed by the presiding Judge. When any cause shall be finally determined, the Clerk shall make a complete record thereof; and all writs of process, and summonses, issuing from the Supreme Court, shall bear test in the name of the Clerk that issued the same, and be dated when they issued.

court.

SEC. 22. The Supreme Court shall have power to impose, and administer all necessa-Power of the ry oaths and affirmations, to punish, by fine and imprisonment, all contempts of authority, in any cause or examination before the said Court, and to establish all necessary rules for that purpose or any other, in conformity to the laws and Constitution of this State, not otherwise provided for by law.

Witnesses & jurors, how

summoned.

Sec. 23. Witnesses shall be summoned in the same manner, have the same privileges, and be subject to the same penalties, that shall be prescribed by law, respecting those summoned to attend the Circuit Courts hereafter to be organized. Jurors may be summoned whenever required, in such manner as the Court shall direct, and be liable to the same fines and punishments which shall by law be inflicted on those summoned to, and attending on, the said Circuit Courts.

ers to take depositions,

SEC. 24. For good cause shewn the said Commission- Supreme Court, or any Judge thereof in vacation, may grant commissions, for the examination of witnesses, and the Clerk of the said Court where any witness shall be about to depart from the State, or shall by age, sickness, or otherwise, be unable to attend the Court, or when the claim or defence of any party or a material part thereof, shall depend on a single witness, may upon affidavit thereof, (to be filed,) issue a commission for taking the deposition of such person, "de bene esse," to be read at the trial, in case the witness shall be out of the jurisdiction of the Court or unable to attend; but the party obtaining such commission, shall give reasonable notice to the opposite party, of the time and place of taking the same.

Sec. 25. In the Supreme Court the par- Parties may ties may plead, and manage their own causes appear in per personally or by their attornies in fact, pro- son or by perly authorized for that purpose, by letters nies. of attorney, or by such attornies at law, as by the rules of the said court, shall be per-

mitted to manage causes therein.

SEC. 26. All suits, actions, prosecutions and recognizances of whatever nature or kind, pending and undetermined in the General Court of the late Indiana Territory, hereto- Transfer of fore held at Corydon, together with all the all suits parecords, documents, process, proceedings and pers and documents from papers belonging to the same shall be, and the late genthe same are hereby transferred into the Su- cral court to preme Court by this act organized, in the the supreme same order and condition they may be in, when this act takes effect; and the clerk of the said General Court, is hereby authorized and directed, to attend on the first day of the first Duty of the term of the Supreme Court, to be holden agreeably to the third section of this act, with all the books, records and papers, belonging or in any wise appertaining to his said office, or any suit therein pending, and shall make out and furnish the said court, with a docket of all the suits, actions and causes now pending in the said General Court, in the same order they shall have been brought therein, and the clerk of the said General Court, shall be, and he is hereby authorized, and required to attend the sitting of the said Supreme Court aforesaid, in manner and form aforesaid as the clerk thereof until the said court shall order to the contrary, and then deliver over the said records and papers, to the clerk of the said

clerk of the gen. court.

er and duty of the judges of the Su-

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Suits transfered to the circuit court.

Supreme Court, hereafter to be appointed, under the penalty of five thousand dollars. The said Supreme Court shall take up such of the said suits or actions, as have been removed Further pow- into the said General Court, from some inferior court, by writ of error or otherwise, and proceed to judgment thereon in the same preme court. manner as if the said suits or actions, had been, in the first instance removed into the said Supreme Court, in the manner herein and hereafter prescribed; and the said Supreme Court, or any Judge thereof in vacation, shall upon application of either party, order the clerk of such court, to transmit all the papers, pleadings and writings, belonging to any, and every such suit or action, which had originated in the said General Court, and now pending therein at Corydon aforesaid, to the Circuit Court of the county in which the cause or action arose, or in which the parties or either of them may reside, or where the defendant was arrested, all which said suits or actions having originated in the said General Court, are hereby transferred to the Circuit Court of the county aforesaid, to which the said papers, pleadings and writings, appertaing to each and every such suit or action, may be respectively transmitted in the manner and by the order aforesaid, and all those suits or actions of whatsnever nature or kind. pending and undetermined, in the General Court of the late Indiana Territory, heretofore held at Vincennes, in the county of Knox, and at Brookville, in the county of Franklin, are hereby transferred into the Circuit Courts. to be holden in those counties respectively; in the same order and condition they may be in when this act takes effect; which Circuit Courts shall take up the same and proceed thereon, to final judgment and execution, in the same manner as if they had been originally instituted in the last mentioned courts, and the clerks of the said General Courts in those

counties, shall deliver over to the clerks of the said Circuit Courts therein, all pleadings, papers and writings which to the suits or actions last mentioned, appertain and belong: Provided however, that the right of appeal, writ of error or change of venue as in other cases is hereby reserved to all the suits, by this act transferred from the General Court, to the Circuit Courts aforesaid.

Sec. 27. The said court shall have a seal Judges to deto be devised by the Judges thereof and the vise a seal. description of the same in writing, shall be deposited and recorded in the office of the Secretary of State and remain a public record, and the opinions and determinations of the The opinion court, shall be delivered in writing, except in of the court cases and on subjects of an unimportant na- to be given in ture, which opinions and determinations shall writing. he recorded, by the clerk in a book kept for that purpose.

All laws and parts of laws coming within the purview of this act, shall be, and the same are hereby repealed. This act to be in force

from and after its publication.

-:: (D:: CHAPTER II.

AN ACT organizing Circuit Courts and for other purposes.

APPROVED-December 24, 1816.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That this state State divided be, and the same is hereby divided into three into three circuits, to wit: the counties of Knex, Gibson, circuits. Warrick, Posey, Perry, Pike and Davies, shall compose, and be the first circuit; the counties of Harrison, Clark, Washington, Jackson and Orange, shall compose and be the second circuit; and the counties of Wayne, Franklin, Dearborn, Switzerland and Jeffer-

son, shall compose and be the third circuit: And in each and every county within each

of the circuits aforesaid, there shall be holden

a circuit court in each and every year. here-

after to be holden at such places as shall be

appointed by law for the holding of courts;

and at such times as shall or may be herein

after directed; and the said courts so holden

in each county, shall be ealled and styled Cir-

Style of the court.

cuit, according to the name of the county in which it shall be holden, and shall each have Court to de- a seal to be devised by the court, who shall cause a description thereof to be recorded.

Associates.

SEC. 2. Each circuit court shall consist of sist of a Pres. one President and two Associate Judges, to ident and two be elected and commissioned in such manner as is provided by the constitution and laws of this state.

SEC. 3. The President and Associate judg-Associates to es of each circuit court, before they proceed to take an oath. perform any of the duties of their respective offices shall take an oath or affirmation of office, smilar to the one required to be taken by the Judges of the Supreme court, to be administered in like manner, which oaths or affirmations, (as the case may be) shall be endorsed on their respective commissions, and a copy or certificate thereof be filed, to wit : that of a President of the said courts in the office Where filed. of the secretary of state, and that of the Associate Judges in the clerk's office in the county for which they shall be elected.

SEC. 4. The clerk of the circuit court, before he shall enter upon the duties of his said office, shall take an oath or affirmation similar to that to be taken by the clerk of the Supreme court, to be administered in like manner, and endorsed upon the back of his commission, and a copy thereof filed in the clerk's office of the county in which he shall be e-To give bond lected to serve, and give bond to the Governor for the time being, and his successors in office, in the penalty of two thousand five hun-

Clerk to take oath.

dred dollars, with two or more securities to Penalty. be approved of by the two associate Judges of the said circuit court, conditioned, faithfully to discharge the duties of his said office as clerk of the circuit court, in and for the county and seasonably to record all the decrees, judgments and orders of said court, and also pay over all monies which shall or may come into his hands for the payment or in discharge of any judgment, order or decree of the said court. whether the same be on the civil or criminal side of said court, to such person or persons as shall by law have a right to demand and receive the same; that such bond shall be spread upon the records of the said court, and the original filed among the papers thereof, and shall not be void upon the first recovery, but may be put in suit at the instance, and for the benefit of any party or parties injured, from time to time until the whole penalty shall be recovered.

SEC. 5. The circuit courts organized by Circuit this act, shall be, and the same are hereby courts courts made courts of record, and shall have jurisdic- of record and tion in each and every county within this state, their jurisdiction and every linear and mind on the state, tion. in and over all crimes and misdemeanors of whatever name or description the same shall or may be, which shall be committed within the jurisdiction thereof, and shall and may hear and determine the same, and sentence give, and execution award, according to the course of the laws that now are or hereafter may be in force in this state; and shall moreover have original jurisdiction in all causes. matters and things at law, and in chancery, and shall have full cognizance of all actions, real, personal and mixed, within their respective circuits; and shall likewise have full power and authority in their respective circuits, to issue writs of Mandamus, Pabeas corpus, & all other writs and process necessary to carry these powers into effect, according to damus sec. the course of the common law and the usages

May issue writs of mane of courts not inconsistent with the laws of this state and the constitution thereof, and proceed thereon to final determination according to law.

President & Associates conservators same.

SEC. 6. The said president of each circuit, and the associate Judges or any one of them shall have full power and authority, of the peace. both in and out of court to act as conservators Further pow- of the peace, and to take all manner of recognizance and obligations which shall be taken in the name of, and made payable to the state of Indiana, and all recognizances for any offence or suspicion thereof. or for the peace, good behaviour, or appearance which shall be taken by the said Judges or any one of them out of court, shall be returned to the next circuit court to be holden in the county where the same is taken, and the said circuit courts or any one of them, shall have full power and authority to issue process into any county in this state, against any person or persons who may have forfeited, or hereafter may forfeit any such recognizance or obligation as aforesaid, and proceed according to law, to levy and collect the same, and when collected, to order the same to be paid over and disposed of according to law.

Judges.

SEC. 7. To the end, that all and every pering from one son or persons indicted or outlawed for felocounty to an- nious or other offences in one county, who other how to shall remove into or dwell in another county, may be brought to justice in the proper county Duty of the where the offence was committed; it is hereby court or any directed that the said court may issue their writ or writs, or any other legal process, or any one of the Judges thereof in vacation, may issue his warrant or warrants, or any other legal process, to all or any of the sheriffs, or other proper officer or officers of said county or counties, to take such person or persons so indicted or outlawed : and it shall be lawful for the said courts to issue subpænas and other process into any county in this state, for

summoning or bringing any person or persons before them to give evidence in and upon any matter examinable and triable before them or either of them, under such penalties as are or hereafter may be provided by law with respect to such process. They shall likewise have power and authority as often as necessity may require, to issue dedimus, for the examination of witnesses agreeably to the regulations which are or may hereafter be established by law.

SEC. 8. All process and writs issuing from Style of all and out of the said courts, shall run in the process. name of the state of Indiana, and bear test in the name of the clerk that issued the same, be dated the time they issue, and made re-

turnable according to law.

Sec. 9. The circuit courts, organized by this act, shall be held in the different counties Circuit in this state, in each and every year hereafter, courts when on the following days, to wit : those in the holden. first circuit, (to wit,) in the county of Knox, on the last Mondays in February, May, and September, and to sit at each term, twelve days, if the business shall require; for the county of Gibson, on the second Mondays in March, June and October; for the county of Posey, on the third Mondays in March, June and October; for the county of Warrick, ou the fourth Mondays in March, June and October; for the county of Perry, on the first Mondays in April, July and November; for the county of Pike, on the second Mondays in April, July and November; and for the county of Davies, on the third Mondays in April, July and November; and those in the second circuit, (to wit,) in the county of Cark, on the third Mondays in March, June and October, and to sit twelve days each, should the business require it; for the county of Jackson, on the first Mondays in April, July and November; for the county of Washington, on the second Mondays in April, July and November; for the county of Orange, on the

third Mondays in April, July and November: for the county of Harrison, on the fourth Mondays in April, July and November; and those in the third circut, (to wit,) in the county of Dearborn, on the fourth Mondays in February, May and September; for the county of Franklin, on the first Mondays in March, June and October; for the county of Wayne, on the second Mondays in March, June and October; for the county of Switzerland, on the third Mondays in March, June and October : and for the county of Jefferson, on the fourth Mondays in March, June and October. The terms of the circuit courts in their respective counties, shall be designated and known by the name of the month in which such terms respectively commence; and each and every court, at each and every term, in the said counties, in each of the three circuits, shall sit six juridical days if the business before them shall require it.

SEC. 10. That the first term of each of the said courts, to be holden in each of the circuits, agreeably to the provisions of the ninth section of this act, shall be holden, and commenced on the days first mentioned therein. No discontin There shall be no discontinuance of any suit, uance, Judg- process, matter or thing, returnable to, or depending in any of the said circuit courts to be holden by virtue of this act, although a quorum of Judges shall fail to attend at the commencement, or any other day of the term; but if such number shall not attend, as shall, under the provisions of the constitution, be authorised to hold the said court, any Judge of Sheriff may said court, or the sheriff attending the same, may adjourn the said court for two days successively, and if a quorum shall not attend on the third day, or having attended one day, shall fail to attend on a subsequent day of a term, the court shall stand adjourned until court in course.

es failing to attend.

adjourn.

Sec. 11. And be it further enected, That all suits, actions, pleas, plaints, indictments, presentments, informations, prosecutions, and causes, both civil and criminal, of what- Suits &c pensoever description they shall or may be, which ding in the are now depending in the present circuit court, late territorias established by, and under the late territori- court transal government, and continued in force and op- ferred to this. eration by the constitution of this state, or those that may hereafter be instituted in the courts aforesaid, previous to the time that this act shall take effect, and be in full operation in Proceedings law, together with all the records, memoran- of the court dums, documents, process, proceedings, rules, on the same. orders, petitions, papers and writings belonging to the same or any of them, in each of the said courts, shall be, and the same are hereby transfered into the circuit courts established by the constitution, and organized by this act. in the same order and condition that they shall or may be in, at the time this act shall take effect; and the said circuit courts organized by this act, shall take up the same and proceed to trial, judgment and execution in the same manner as if no alteration had been made in the said courts, and in the same manner as if such suits and actions so transfered had been originally commenced in the courts hereby organized.

SEC. 12. That all records, books, deeds, memorandums, dedimuses, exhibits, papers and writings, of whatever nature or kind, belonging or appertaining to the office, or offices of the said circuit courts established by the late territorial government, and now in being, Duty of the as continued by the constitution, together with clerks of the their seal and press, shall be by the clerks of late circuit the said courts in each and every county, delivered over to the clerks, to be elected or appointed for the circuit courts organized by this act, within ten days after such clerk shall be elected or appointed and sworn into office, accerding to the provisions of this act, under the

Penalty. How recoyered.

penalty of five thousand dollars, to be recovered by indictment or presentment, in the said circuit courts.

This act shall be in force from and after the tenth day of February next.

CHAPTER III.

AN ACT, reducing into one all the acts and parts of acts now in force in this state, regulating proceedings in actions at law, and suits in Chancery.

APPROVED-January 28th 1818.

Sec. t. BE it enucted by the General Assembly of the State of Indiana, That it shall be the duty of the plaintiff or plaintiffs, in all actions at common law, to file his, her or their declaration, before the issuing of the original writ: But, nevertheless, original writs and mesne process may be sued out previous to filing the declaration, subject to the regulations hereafter mentioned.

Process in suits at law, when return able.

Declaration

prior to the

issuing of the

to be filed

writ.

When bail shall be giv-

Or affidavit.

SEC. 2. Original and mesne process against a defendant or defendants in action at common law, shall be returnable to the first day of the term next after they issue; and bail shall be required in all actions of debt, on the case founded upon any writing obligatory, bill, or note in writing for the payment of money, and in all actions of covenant and detinue, and bail shall be required in all actions where an affidavit shall be made and filed by the plaintiff or any other person on his behalf, of an existing debt then due from the defendant to the plaintiff, which affidavit may be taken before, and certified by, any person or persons duly authorized to administer oaths and affirmations, and the sum specified in such affidavit, obligation, bill or note in writing, shall be endorsed on the writ or process, by the clerk

who issues the same, and every judge of the Circuit Courts, in actions of trespass, assault and battery, trover and conversion, and in actions on the case; whereupon, from affidavit or affirmation in writing, to be filed in the Clerk's office, it shall appear necessary that the defendant or defendants shall give bail. may and he is hereby authorised to direct bail to be taken, by endorsement on the original writ. No person shall be deemed sufficient Qualificabail in any action, unless he be a freeholder tions of bail. and reside in the state.

SEC. 3. Original and mesne process in chan-process in cery suits, shall be returnable to the next suc- Chancery. ceeding term, unless they issue in term time, When to be in which case they shall be made returnable to issued and any day of that term. Provided, that no such

process shall issue but on bill filed. Sec. 4. If in any suit at common law or in chancery the process shall not be returned ex- When the ecuted, on the return day the clerk may issue sue an alias, an alias, pluries or other process, without an &c. order of the court therefor, or the plaintiff at his election at the return of not found by the officer, against a resident defendant, may take out an attachment against the goods and chat- When an attels, land and tenements, of such defendant or tachment defendants which shall be proceeded upon as may issue aother domestic attachments. Provided, that gainst a resident defendit shall not be la wful for any sheriff or other of- ant. ficer to return, not found, unless he shall have been once at least at the usual place of abode of suchdefendant or defendants in case he shall have any.

Sec. 5. It shall be the duty of every sheriff or other officer, who executes original or mesne pro. Penalty on 1 cess on a defendant, to insert in his return the officer, for time of executing such process; but should turn time of he fail to return the time of executing such executing writ or process, it shall not impair the return process. if executed; but such sheriff or other officer shall be fined by the court to whom such process may be returnable, for such failure, in a-

By order of a judge of CC.

clerk may is-

Notice prior to making ficer.

ny sum not exceeding ten dollars, on the motion of any person who may be party to the suit, such officer having had ten days notice of motion vs. of the time of making such motion; and such sheriff or other officer, shall also be liable to the action of any person aggrieved by such failure. It shall be the duty of the sheriff or other officer, whenever hereafter process, (other than subpoenas,) shall come into his hands, to endorse upon the process the time of its reception.

Bail. How to be taken.

Form of re-

cognizance.

Objections to bail, how to be made.

Sec. 6. When process requiring bail shall be executed, it shall not be necessary for the sheriff or other officer, executing such writ or process to take any appearance bail bond, but in lieu thereof he shall take from the bail, an endorsement on the process, shewing the name of the bail, and for whom the bail was entered, which endorsement shall be signed by the bail, and be in substance as follows: I, (or we) A. B. do hereby acknowledge myself (or ourselves) special bail for the within named C. D. in the suit named in the within writ, witness my hand (or our hands) this A. B. which shall have the of force of a recognizance of special bail, and as such shall be obligatoryon the Bail, their heirs, executors and administrators, jointly and severally. The giving such bail shall not be considered an appearance in the suit.

SEC. 7. If the plaintiff or plaintiffs shall not be satisfied with the sufficiency of the bail so taken, he may, at the term to which the writ is returnable, or at the next term there. after, if in the mean time final judgment ne not given in the cause, object to the sufficiency of the bail; provided notice of the objection be given to the officer to whom such writ was directed; and the Court shall thereupon hear and determine the objections to the sufficiency of the bail as heretofore.

SEC. 8. Provided, however, That if a notice for the purpose abovementioned shall be

adjudged insufficient, the court when they de. Proviso in termine its insufficiency, may allow the plain- case, the notiff until some day in the next term, to give jections to another notice and make his objections to bail, bail, be insufprovided in the mean time, final judgment be ficient. not entered.

Sec. 9. If the bail be adjudged insufficient, and other good bail approved of by the court be not entered, the bail so objected to. shall Officer liable not thereby be discharged, and if the plaintiff to plaintiff shall proceed to judgment against the bail so sufficient bail adjudged to be insufficient, and the demand be not satisfied by the return of the first scire facias, against the bail, the sheriff or other officer shall be liable to the plaintiff for the amount of his demand and all costs of snit which may be recovered, by action against the sheriff or other officer, or against him or his securities.

SEC. 10. When one or more of the defendants in an action of debt or in suits in chancery, shall reside in any other county or counties within this state, the capias in law and the subpæna in chancery, may issue at the time of filing such declaration, or bill in chan- Process vs. cery, to such county or counties, and be exe- defendants cuted by the sheriff, under sheriff or coroner, living in difas the case may be, of such county or coun-ferent counties, and be returned to the office from whence be executed. they issue, according to law; except that no judgment shall be given or pronounced against such defendant or defendants, living out of said county, unless process shall actually be returned executed on some one or more of the defendants, who shall reside in the county where such action shall be commenced : Provided however, that in all cases where an action at law shall be commenced, against joint or joint and several obligors, and the sheriff or other officershall return that any one or more of the defendants to such action are not an inhabitant or inhabitants of his county, the plaintiff shall be at liberty to suggest upon

D 4

that one of not an inhabitant.

Clerk to make a docket of suits.

Apportionment thereof.

actions of debt & chancery cases.

Clerk to is. nasifthe declaration be filed or the writ issued or to return day.

at law shall al.

Proviso for continuance of action.

When the writ issues previous to filing the declaration.

Proceedings the record, such return, and proceed to judgon the return ment against him or those, upon whom process shall have been returned executed, but ants in an ac- shall be at liberty to sue out a scire facias ation on a joint gainst such other defendants, and have judgobligation is ment and execution thereon.

SEC. 11. It shall be the duty of every clerk, within three weeks after the adjournment of his court, at each term to make out his docket for the succeeding term, and therein docket all suits brought, which have not before been docketed; after which he shall on issuing every original writ returnable to the succeeding term, enter the suit on the docket for that term. In making out his docket, he shall set as many suits for each day as in his opinion Exception to will best suit the business of the court; except that actions of debt shall be docketed to the second day of the term, and chancery cases shall be set down at the end of the common law docket, to no particular day, but may be taken up at any time in the discretion of the court.

SEC. 12. He shall on the application of eisue subpoe- ther party, issue subpoenas for witnesses as soon as the cause is docketed; except in those cases in which no declaration is filed, or in which the writhas not been issued ten days ten days pri- at least, previous to the return day thereof.

Src. 13. All actions at common law shall stand for trial, at the term to which the prowhen actions cess is returned executed : Provided however, if it shall not appear, by the return of the stand for tri- officer that the process was executed ten days before the return day, the cause shall be continned until the next term, unless both parties consent to a trial.

> Sec. 14. If the suit be brought previous to the filing of the declaration, the plaintiff or plaintiffs shall not have a right to demand a trial until the term succeeding the one in which the declaration may be filed. In suits thus brought, the plaintiff or plaintiffs shall file a

declaration on the calling of the cause, or on plaintiffingefailure the suit may for that cause be dismissed. The plaintiff in replevin and the defen- cases may dant in all other actions, may plead as many several matters of law or fact as he shall think number of

necessary for his defence. SEC. 15. The defendant or defendants shall file his, her or their plea or pleas on or before the day to which the cause is docketed at the before the first term at which the cause stands for trial, day on which and on failure shall not be thereafter permit-

ted to file any plea to the jurisdiction of the court, nor in abatement, nor to file a special clude a plea demarrer to the declaration, nor shall any to the jurisplea in abatement be admitted unless the party offering the same shall prove the truth a special dethereof by oath or affirmation : Nor shail any murrer. plea of non est factum to a deed, or non assumpsit or other plea denying any instrument Pleas in aof writing, which shall be made the founda- the pleas non tion and git of an action, and declared upon est factum & as such in the plaintiff's declaration, be re- non assumpceived unless supported by oath or aftirmation, sit, to be supas aforesaid, nor shall the plaintiff be at liber- outh. ty to gainsay any deed, bill, bond, release, or other acquitance or receipt which may or shall be lawfully pleaded by any defendant When repliin bar of the plaintiff's demand, unless the cations must same shall be denied upon oath in like man- be supported ner: But nothing herein contained shall be by oath. so construed as to affect any instrument of writing whatever, which shall or may be offered in evidence, in any suit, unless the same shall have been specially set forth in the pleadings.

SEC. 16. On the calling of a common law On the calsuit, if a plea or pleas have not been filed, the ling of the defendant or defendants shall plead and the cause to plaintiff or plaintiffs reply, and the defendant plead instanor defendants rejoin, and so on until the issue or issues in law or fact be made up and a trial shall thereupon be had, and if either party shall fail thus to complete the issue or is-

plead any

Failing to file a plea on, or set for trial, shall prebatement and

Proviso for

sues, the court may enter judgment against him, her or them for such failure : Provided however, that the court may for good cause shewn, allow either party a further day in that further time or the next succeeding term, to plead, reply or the like, such party paying the costs occasioned by the postponement : Provided however, that nothing herein contained, shall be so construed as to prevent either party from filing proper pleadings before the calling of the cause.

Leave to amend.

When the

cause may be

continued in

consequence

of the same.

Sec. 17. The court may give leave to amend the declaration or other pleadings according to the ancient practice of courts, except that such amendment shall be filed immediately on obtaining leave to amend, unless the court for good cause, give further day. If the amendments be in matter of form, the trial shall not be delayed in consequence thereof: If it be in matter of substance, the oppesite party may immediately answer thereto, upon which the suit shall proceed as if no amendment had been made, or he may at his election, demand a continuance of the cause until the next term; the costs occasioned by the amendment shall be paid by the party cmending. If the plaintiff amend his declaration, the defendant or defendants may immediately demur thereto for special cause, although the time herein before mentioned, for filing a special demurrer shall have elapsed, but if the defendant or defendants, demand a postponement of the suit on account of such amendment, he, she or they shall not be permitted to file a special demurrer or any other ded declara- dilatory plea to the amended declaration.

Proviso admitting a spe cial demurrer to amen-

Sec. 48. If in an action at common law, the plaintiff omit to take judgment against a defendant or defendants for failing to plead, when by the foregoing provisions, he might so take judgment, the defendant or defendants may at any time, before interlocutory judgment, plead any plea the filing of which is not

by this act limited to the first term, and if the Defendant plaintiff or plaintiffs take an interlocutory may plead indgment on account of such failure and a after the writ of enquiry; but if the writ of enquiry be plaintiff bas not executed, the court may in their discretion, failed to take on motion of the defendant or defendants, at Judgment for any time before the writ of enquiry be executed, set aside the interlocutory judgment, and ter interlocupermit a plea or pleas to the merits to be filed; tory judgbut where a plea or pleas to the merits are fi- ment, if the led, in either of the cases in this section mon- ry be not extioned, the plaintiff may wave his right of tri- ecuted. al at that term, and have a general continuance of the cause.

Sec. 19. In suits in chancery the defer- continuance. dant or defendants shall plead, answer and demur, on or before the first day of the term, cery when to next succeeding the one to which the process be made up. may be returned executed and at the calling of the cause at such term, the complainant or complainants shall reply and the defendant or defendants rejoin, and so on if necessary, until the issue or issues of law or fact be made up, and if either party fail thus to complete the issue orissues, the court may enter a decree against him, her or them for such failure. All answers shall be on oath or affirmation, taken before any Judge or justice of the peace, and if the answer shall deny the allegations in the bill, the complainant or complainants shall not have a decree, unless the matter of Bill to be sup the bill, so denied, shall be proved by two ported by the witnesses or by one witness and corrobora- testimony of ting circumstances : Provided however, that if two witnessthe complainant or complainants shall be called on, to answer interrogatories contained in When the isan answer of a defendant or defendants, the sue shall be cause shall be continued, unless the complain. made up if ant or complainants voluntarily answer at that the complain term, and in case a suit be thus continued for to answer inan answer to interrogations, the answers shall terrogatobe filed on or before the first day of the next ries. term, and the issue or issues shall be comple-

want of a plea and also, al-

But plaintiff may have a

fact.

When an issue at law.

If the bill be dismissed as to one of the defendants complainant to pay him costs.

When the complainant may amend with or without payment of costs.

Proceedings on the introduction of new mat er by the defendant.

Defendant may bring in a new party.

ted at such term. If the issue be made up by bill, answer and replication or the like, whereby depositions are to be taken, the cause shall When a trial stand for trial at the term next after the issue in an issue of is made up. If on a plea filed, an issue of fact be made up for trial by jury, the court shall appoint the time of trial, and witnesses may be summoned to appear at such trial and be examined before the jury under the same rules and regulations, as at common law. If an issue of law be made up by demurrer, it shall stand for argument at the term at which it is made up. The complainant or complaiaants may make as many defendants to his, her or their bill as he, she or they please, altho they may claim under different titles; but if the bill is dismissed, as to any one of the defendants, or any of the defendants shall succeed on the final hearing of the cause, the complainant or complainants shall pay him, her or them their costs, except the court for special reasons, shall otherwise decree according to the circumstances of the case, and may amend his, her or their bill, at any time before the defendant or defendants have answered, without the payment of costs, but in all material a. mendments after the answer is put in, he, she or they shall pay the defendant or defendants the costs occasioned by such amendment.

> SEC. 20. The defendant or defendants may introduce any new matter in his, her or their answer, material to his, her or their defence, and call upon the complainant or complainants, to answer thereto on oath or affirmation, which the complainant or complainants shall do within the same time, under the same rules and regulations as a defendant or defendants are compelled to answer the bill of the complainant or complainants, the defendant or defendants shall be at liberty to bring any new party before the court; he shall state in his answer and insert interrogatories for him, her or them to answer; whereupon a subpona

shall issue, and all other proceedings be had May have a as is directed in the case of other defendants, subpoena. the defendant or defendants may amend his, May amend. her or their answer, at any time before a special replication is filed without costs, but if the answer is amended after a special replication is filed, the party amending shall pay the complainant or complainants the costs occasioned thereby.

SEC. 21. The complainant or complainants When the may proceed to take depositions one month af- complainant ter the defendant or defendants against whom and defendant the depositions are to be read are served with may proceed process; the defendant may proceed to take to take depodepositions one month after he files his an-

SEC. 22. Attachments for not answering tachment for shall issue by order of the court only. They shall be returnable at such time as the court issued and may order.

SEC. 23. Exceptions to an answer may be taken at any time before the answer be repli- Exceptions ed to. The exceptions shall stand for argu- to an answer ment, at the term at which they are taken, to be taken. without waiting for a better answer.

Sec. 24. If a plea or demurrer be overrul- After a plea ed, in a case in which by the course of chance- &c. is overry practice the party might thereafter answer, ruled the or if exceptions to an answer be adjudged court may insufficient, the court shall, in their discretion, permit the considering the circumstances of the case, ap- swer. point a time in which the party shall file his answer; and on his failing to answer, may proceed as in a failure to answer in other cases in the time directed by this act.

Sec. 25. In suits in chancery either party Papers may may lodge his, her or their answer, replication be left with or other pleadings. with the clerk in vacation: the clerk. but the opposite party shall not be bound to notice such answer, replication, or other plead. ing as filed, until the same be entered in court.

Sec. 26. In suits in chancery against ab-

When atnot answering shall be returned.

party to an-

Notice to absent defendants. How to be given.

sent defendants, orders requiring the appearance of the defendant or defendants, and a publication in a newspaper shall be had on affidavit made and filed, and such order maybe published in any public newspaper, published weekly within the state, at the discretion of the court, for four weeks successively, which shall authorize the complainant or complainants to proceed in the same manner as if process had been returned executed to the term to which the defendant or defendants may by such publication be required to enter an appearance. After appearance or subposna executed, or publication as aforesaid, the amendment of the bill or other pleadings shall not require a new subpæna or other publication. Provided, however, that such absent defendant or defendants shall be permitted to open such decree at any time within one year thereafter, by appearing and filing his, her or their answer to the complainant's bill, and not after unless such defendant shall be an infant, feme covert, non compos mentis, or beyond sea, on vor of infants public business, in which case the time of such disability shall be excluded from such computation. Provided, also, that bills of review, shall and may be filed according to the course of chancery practice and usages of courts of equity.

Bills of review.

Sec.

When he

court.

may open the

decree of the

Proviso in fa-

Either or both parties failing to apnear. How court shall proceed.

Sec. 27. If a plaintiff at law, or complainant in chancery, shall on the calling of his cause, fail to prosecute it, and the defendant shall also fail to appear, the court may, in their discretion, either enter a non-suit against the plaintiff or complainant, or continue the cause.

SEC. 28 if from any cause the issue or issues be notmade up at the time herein prescribed, the court shall have the like power, at each subsequent calling of the suit, until the issue or issues be completed, to compel the parties to complete them.

SEC. 29. The clerk shall endorse on all The clerk shall endorse answers, pleas and other pleadings in suits at

common law and in chancery, the time when fil- on pleas, &c. ed, and shall enter on the order book in court that the time when they such answer, plea, or other pleading has been were filed. filed, but it shall not be necessary to copy any answer, plea or pleading in the order book.

SEC. 30. Nothing herein contained shall Court have be so construed as to prevent the court from discretionacontinuing a cause at any stage for good cause ry power to shewn, nor shall any thing herein contained continue a be construed to prevent the court from giving either party in suits at common law and in chancery, a further day upon good cause shewn, and at the cost of the applicant to file a declaration, plea, answer or other pleading. Provided, that such leave doth not contravene the provisions of the fifteenth, seventeenth and eighteenth sections of this act.

§ 31. Nothing herein contained shall be so con-Rules for destrued as to require any rule for a declaration, clarations plea, answer or the like, but judgments or de- dispensed cree may be entered for a failure as is herein with. before prescribed, without any such rule.

SEC. 32. The said courts in term time, or Injunctions. the Circuit Judge, or two associates in vaca- By whom ation, in presence of each other, shall have warded. power to award injunctions to operate in their own county, but the circuit judge may award injunctions, to enjoin any judgments within the district over which he presides.

Sec. 33. Injunctions may be awarded in not granted, open court without notice, but no injunctions shall be granted or awarded in vacation, unless cept in open the party applying for the same, shall give ten court. days notice of the time and place of his application to the defendant or defendants, nor Norunless shall any injunction be awarded, unless up- supported by on bill filed, and the allegations thereof suppor- oath. ted by eath or affirmation before some Judge or justice of the peace, nor unless the Court or the Circuit Judge or Judges, as the case may be, shall be satisfied by the equity of the bill, nor unless the complainant or complain- and bondgivants shall give bond with security, to be ap- on.

Injunctions

E 5

proved of bythe court or judge or judges as the case may be, in a sum sufficient to secure the payment of the judgment and costs so to be enjoined together with ten per centum thereon.

Complainant

SEC. 34. No injunction shall be granted to to release er- stay proceedings on any judgment at law, unless the party applying for the same, shall release all errors at law in the judgment so prayed to be enjoined, under the seal of the party praying the injunction, to be filed in the suit at law and certified in the bill; nor for a greater sum than he, she or they shall shew. that he, she or they are not equitably bound to pay, and so much as may be thought necessary to cover costs; nor unless the sum to be enjoined is sufficient to admit of original jurisdiction in the court, to which application is made for the injunction

Clerk to is-

SEC. 35. Whenever an injunction is awarded, the clerk shall issue a subpoena with the sue subpœna. injunction, which shall enjoin all parties, attornies, officers, &c. from proceeding on the judgment enjoined, and from the issuing of the same, all proceedengs on said judgment and any execution thereon shall be stayed, and all and every officer of said county and of this state shall desist, and if the sheriff or other officer has taken any money or property of the defendant or defendants at law, from the com-Officer to re- plainant or complainants in equity, he shall return the same to said complainant or complainants in equity, and return such execution enjoined to the officer from whence it issaed.

Sto.

Motions to dissolve iu-Tunctions without no-

Sec. 29. Motions to dissolve injunctions on bill for want of equity, may be made at any time without notice, but motions to dissolve on bill and answer; or bill, answer and exhibits, shall not be made, unless the opposite par-With notice, ty has had ten days notice of such motion; and on the dissolution of any injunction, the court shall decree in favor of the defendant or defendants, ten per centum on the amount of the

judgment at law.

SEC. 37. The said Courts or the Circuit Writs of ne Judge, or the two associates in vacation, shall exeat, by have power to grant writs of ne exeat; but said, whom grantwrits shall not be granted but upon bill filed ed. and the allegations therein supported by oath or affirmation, nor until the party praying for the same shall enter into bond in the clerk's office of the court, from which the same is to be issued, in such sum and with such securities as the Court or Judge or Judges granting the same shall direct, and the court or the Judge or Judges granting such writ shall endorse thereon in what penalty bond and security shall be required of the defendant or defendants; and if the defendant or defendants shall go out of the state, and return before a personal appearance shall be necessary by any decree of the court, or shall be necessary to perform any order of the court, such, his, her or their temporary departure, shall not be considered a breach of the conditions of the bond, and incase any person or persons so stayed by such writ of ne exeat, shall think himself, herself or themselves aggrieved thereby, he, she or they may bring suit on the bond so given by the complainant or complainants, and if on the trial it shall appear, that such writ was prayed without a just cause the person or persons injured shall recover the damages sustained by such writ of ne exeat.

SEC. 38. If the defendant or defendants How it may shall, by answer, satisfy the court that there be dischargis no reason for his being restrained, or give ed. sufficient security to perform their decree the writ of ne exeat may be discharged.

SEC. 39. All notices required by the provisions in this act, shall be given to the party, Notice, how his, her or their agent or attorney; provided given, either said party, agent or attorney resides within to a resident or non-resithis state, but if neither the party, agent or at- dent party. torney resides within this state, the notice shall

be filed in the clerk's office, of the Court where the suit is depending, or published three weeks

Costs given to the suc-

Court of chancery invested with power to effectuate its decree.

Limitations of actions.

successively in a public newspaper. SEC. 40, Costs shall be taxed in favor of

cessful party. the party who succeeds in any suit in Chan-

Sec. 41. The court may issue any execution to carry into effect any decree in the same manner and to operate in the same way, to all intents and purposes, on any decree pronounced in any case in chancery, as a court of law may now or hereafter on any judgment at law.

Sec. 42. All actions of tresspass quare clausum, fregit, all actions of trespass, detinue, actions of trover, and replevin for taking awaygoods and chattels; all actions of accounts and upon the case, other than such accounts as concern the trade of merchandize, between merchant and merchant, their factors or servants; all actions of debt, grounded upon any lending or contract, without specialty; all actions of debt for arrearages of rent; all actions of assault, menace, battery, wounding and imprisonment, or any of them which shall be sued or brought, shall be commenced and sued within the time and limitation hereafter expressed, and not after, that is to say: the said actions upon the case other than for slander, and the said actions for account, and the said actions for tresspass, debt, detinue and replevin for goods and chattels, and the said actions of trespass quare clausura fregit, within five years next after the cause of such action or suit, and not after; and said actions of trespass, assault, battery, wounding, imprisonment, or any of them within three years next after the cause of such actions or suits, and not after; and the said action upon the case for words within one year next after the words spoken, and not after.

Sec. 43. In all actions upon any bond, or any penal sum, for non performance of cove-

nants or agreements in any indenture, deed or writing contained, the plaintiff or plaintiffs Plaintiff may may assign as many breaches as he or they ches on bond. may think fit; and the jury upon the trial of such action or actions, shall and may assess damages for such of the breaches as the plaintiff shall prove to have been broken, and on such verdict, the like judgment shall be entered, as heretofore has usually been done, and when judgment on demurrer or by confession, or nihil dicit, shall be given for the plaintiff, he may assign as many breaches of the covenants or agreements as he shall think, upon which a jury shall be summoned to en- Jury to asses quire of the truth of every one of those brea. damages for ches, and to assess the damage the plaintiff the respectshall have sustained thereby, and execution shall issue for so much and the judgment shall remain as a security to the plaintiff, his exec- Judgment to utors and administrators for any other breaches which may afterwards happen, and he or they have a scire facias against the defen- Scire facias dant, and assign any other breach, and there. thereon. upon damages shall be assesed and execution issue as aforesaid and in all actions which may be brought upon any bond or bonds for the payment of money, wherein the plaintiff shall recover, judgment shall be entered for the penalty of such bond, to be discharged by the payment of the principal and interest due thereon, and the costs of suit and execution shall issue accordingly; or, if before judgment the defendant shall bring into court the principal and interest due upon such bond, he shall be discharged, and in that case judgment shall be entered for the costs only SEC. 44. And in any action of debt on sin-

gle bill or in debt or scire facias upon a judgment, or in debt upon bond, if before action When paybrought, the defendant hath paid the princi- ment may be pal and interest due by the defeazance, or condition he may plead payment in bar, In

ive breaches.

remain as se-

pled in bar.

feiture to give judgment.

all cases brought before any circuit court to recover the forfeiture annexed to any articles of agreement, covenant or charter party, bond obligation or other specialty, or for forfeiture C. C. for for- of real estate, upon condition by deed of mortgage or bargain and sale, with defeazence, (when the forfeiture breach or non performance shall be found by a jury, oy the default or the confession of the defendant, or on demurrer) the court before whom the action is, shall make up judgment therein, for the plaintiff to recover so much as is due in equity and good conscience, and shall award execution for the same, by writ of capias ad satisfaciendum, fieri facias or other judicial writas the case may require.

When the parties are mutually indebted to each other.

Plea of payment may be made.

and special matters given in evidence.

Verdict for defendant.

-For plaintiff.

SEC. 45. If two or more dealing together be indebted to each other upon bonds, bills, bargains, promises or the like, and one of them commence an action in any court, if the defendant cannot gainsay the deed, bargain or assumption upon which he is sued, it shall be lawful for such defendant to plead payment of all or part of the debt or sum demanded, and give any bond, bill, receipt, account or bargain in evidence, which shall or may be so pleaded and set forth in such plea or pleas, and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant, and judgment be entered that the plaintiff take nothing by his writ, and shall pay the costs; and if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid, shall be defalked and the plaintiff shall have judgment for the residue only, with costs of suit; but if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, who shall have judgment and execution for such sum or sums so found by the jury, with costs as in all other cases, and a verdict in all actions, whether for plaintiff or defendant, shall

carry full costs : Provided however, that it shall be lawful for any defendant or defen- provise for dants to any action or actions, brought upon the considera specialty, to go into and impeach the con- ation of a spe sideration of such instrument or any part cialty. thereof by special plea.

Sec. 46. Provided always, that in all cases, where a tender shall be made and full payment offered, by discount or otherwise, in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made, doth refuse the same, and yet afterwards will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit.

SEC. 47. Interpreters may be sworn, tru- Interpreters. ly to interpret, when necessary.

SEC. 48. Every person desirous of suffer. Nonsuit ing a nonsuit shall be barred therefrom unless tered before he do so before the jury retire from the bar.

Sec. 49. Not more than two new trials tire. shall be granted to the same party, in the same New trials:

Sec. 50. Any instrument to which the party making the same shall affix a scrawl by The use of way of seal, shall be adjudged and holden to seals abolishbe of the same force and obligation as if it ed. were actually sealed : Provided however, that all unsealed instruments shall have the same force, validity and effect in law as if scaled, and the same action had and maintained thereon.

Sec. 51. Where there are several counts. Verdict for one of which is faulty, and entire damages entire damaare given, the verdict shall be good, but the ges not vitiadefendant may apply to the court to instruct ted by a faulthe jury to disregard such faulty count or ty count. counts.

Sec. 52. No negro, mulatto or Indian shall Negroes &c. be a witness. except in pleas of the state a- when witness gainst negroes, mulattoes or Indians, or in ci- es. vil cases where negroes, mulattoes or Indians alone, shall be parties.

must be enthe jury re-

Who shall be deemed a muiatto.

Sec. 53. Every person other than a negro of whose grand fathers or grand mothers any one is, or shall have been a negro, although all his other progenitors except that descending from a negro, shall have been white persons, shall be deemed a mulatto, and so every person who shall have one fourth part or more of negro blood, shall in like manner be deemed mulatto.

Nonresident to give security for costs.

SEC. 54. No suit shall hereafter be commenced, in any court within the state, by a non resident, until he shall file in the clerk's office a bond with approved security, who shall be a resident of this state, conditioned for the payment of all costs that may accrue in consequence thereof, either to the opposite party or to any of the officers of such court, and the same may be put in suit by any of the persons aforesaid, for the non payment of the sums that may respectively become due to them.

Variance of writ no bar

SEC. 55. No judgment after a virdict of twelve men, shall be stayed or reversed, for any defect or default in the writ, original or judicial, or for a variance in the writ from the declaration, or other proceedings, or for any mispleadings, insufficient pleadings, discontinuance, misjoining of the issue, or lack of warrant of attorney, or for the appearance of either party being under the age of twentyone years, by attorney, if the verdict be for him, and not to his prejudice or for not alleging any deed, letters testamentary, or commission of administration to be brought into court, or for the omission of the words "with force and arms," or "against the peace," or for mistake of the christian name or sirname of either party, sum of money, quantity of merchandize, day, month or year, in the declaration or pleadings, (the name, sum, quantity or time being right in any part of the record or proceeding) or for the omission of the averment, "this he is ready to verify," or

"this he is ready to verify by the record." for not alledging "as appeared by the record." or for omitting the averment of any matter, without proving of which the jury ought not to have given such verdict, or for not alledging that the suit or action, is within the jurisdiction of the court, or for any informality in entering up the judgment by the clerk; neither shall any judgment entered upon confession, or by nihil dicit or non sum informatus be reversed, nor judgment after enquiry of damages be stayed or reversed for any omission or fault, which would not have been a go d cause to stay or reverse the judgment if there had been a verdict.

SEC. 56. When a demurrer shall be joined in any action, the court shall not regard any Demurrer. other defect or imperfection in the writ, return, declaration or pleading than what shall be specially alledged in the demurrer as causes thereof, unless something so essential to the action or defence, as that judgment according to law and the very right of the cause cannot be given, shall be omitted, and for prevention of delay by arresting judgment and vexatious appeals, the several acts of Parliament, commonly called the Statute of Jeofails, which were in force and use in England, on the seventh day of February, one thousand seven hundred and fifty two, shall be, and are here-

SEC. 57. Papers read in evidence, though What papers not under seal, may be carried from the bar may be givby the jury.

by declared to be, for so much thereof as re-

lates to mispleading, Jeofail, and amendment

in full force in this state.

SEC. 58. After an issue joined in an eject- On an issue ment, on the title only, no exception of form in ejectment or substance shall be taken to the declaration no exception in any court whatsoever.

SEC 59. If in detinue, the verdict shall omit price or value, the court may at any time award a writ of enquiry, to ascertain the same. Re-

to form or substances ward.d.

In detinue a If on an issue concerning several things in one writ of enqui- count in detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted.

Sec. 60. Judgment on confession shall be

qual to a release of errors.

No discontin tiance for want of a court.

Proceedings

of each day

to be signed.

SEC. 61. There shall be no discontinuance of any suit, process, matter orthing, returned to or depending in the circuit court, although a quorum of the judges shall fail to attend at the commencement, or any other day of any session, but if a majority of them shall fail to attend, at the commencement of any session, any judge of the said court, or the sheriff attending the same, may adjourn the said court from day to day, for three days successively; and if a quorum shall not attend on the fourth, or having attended one day, shall fail to attend on a subsequent day of a session, the court shall stand adjourned till court in course.

SEC. 62. Each and every days proceedings of the several circuit courts within this state, shall be drawn up at full length, upon the order book in the usual form, by the clerk thereof, which after being read by the said clerk, or his deputy, in the presence of the court, and the errors, if any, corrected, shall be signed by the President of the said court, or in case of his absence, by the two associates.

Clerk to procure books of record, &c.

How the same shall be kept.

SEC. 63. It shall be the duty of the clerk of the several circuit courts within this state, to procure at the expence of the proper county, a good and substantial order and complete record book, bound in calf, and other necessary books, together with an execution book, bound in like manner, in which he shall at the time of issuing any and every execution, enter the name or names of the parties, and in the margin at the left, the day it shall issue, and in a column to the right, he shall enter at full length, the endorsement on such execution,

which shall contain a brief statement of the amount of debt or damages, interest and costs. and whether to be replevied or not, and in another column to the right of it, the rule day to which it shall be made returnable, and to whom directed and delivered, and when the same shall be returned by the officer in another column shall enter at full length, such return and the day on which it shall be made, and shall make the like entries at the time of issuing analias, plaries or the like; which book and the entries therein made as aforesaid, shall be deemed and taken as matters of record to all intents and purposes.

Sec. 64. It shall be the duty of the President of each of the circuit courts within this state, once in each and every year, to exam- spect clerk's ine each and every clerk's office within their office. respective circuits, and report in writing a brief statement of the situation in which he shall find the books and papers of such office, to the court, which shall be spread upon

the order book.

Sec. 65. lu all suits at common law and chancery, one justice of the peace shall have J. P. authorfull power and authority to take deposition or ised to take depositions, to be read as evidence in any such suit or suits within this state.

S.c. 66. That a dedimus potestatem, issuing from the court, authorizing the taking of taking depo-such depositions, shall not be necessary; but sition in this all the instices of the peace of this state, in state dispenvirtue of their office, are hereby invested with sed with. complete and full power and authority, to take deposition or depositions, any law usage or cus tom to the contrary notwithstanding. That when any dedimus potestatem shall issue from any court of record within this state, under the seal of the said court, directed to any jus. tice of the peace, within the limits of the state, requiring such justice to cause to come before him, any person or persons, for the purpose of taking his, her or their deposition or deposi-

President of

depositions.

a J. P. of a foreign state sufficient authentication.

Certificate of tions, to be read as evidence in any cause depending in any of the courts aforesaid, the certificate of said justice, certifying himself to be such, shall be a sufficient authentication, to entitle the party to the benefit of the same, Provided it shall have been in all other respects legally taken.

Law repealed placing suits at the foot of the docket.

SEC. 67. And be it further enacted. That so much of the law now in force in this state, as authorizes the plaintiff or plaintiffs. on the calling of any suit or suits in any court, to place or put the same at the foot of the docket, be, and the same is hereby repealed. Sec. 68. And be it further enacted, That

from and after the passage of this act, the de-

fendant or defendants in any suitor action in

Defendant may replevy on the record.

any court of record within this state, shall have the right, when any judgment or judgments may be entered against him, her or them, in any such court, whether the same be by confession or otherwise, to replevy the same upon the record, at any time after judgment, and before the issuing of execution thereon, by producing good and sufficient security to be approved of by the court, in term time, or any judge or the clerk of said court in vacation; that in either case, it shall be the duty of the clerk to make the following entry opon the record, (to wit:) A B, is or are, (as the case may be) security for C D, (or as the case may be) for the payment of the above judgment, interest and costs at the expiration of five months from and after this date, ; which said entry shall have the force and effect of a replevin bond, and if the said judgment and every part thereof, be not paid and satisfied at the expiration of the time therein mentioned, the said clerk shall be, and he is hereby required, on the application of the plaintiff or plaintiffs, or other person owning such judgment, to issue execution against such principal or principals, and his security or securities, in all respects as if a replevin

bond had been taken for the same : Provided however, that nothing herein contained, shall be so construed as to prevent any person or persons from replevying any judgment after execution may or shall issue as heretofore.

SEC. 69. When any judgment so rendered in any circuit court in this state, or in the snpreme court, and the party in whose favor the bond given judgment is rendered, does not order an ex- on the record ecution to issue, until five months hath elapsed from the day of rendering the judgment; then, and in that case, there of judgment shall be allowed no replevy. And hereafter when any execution is replevied, the date of the replexy bond shall be taken from the day of rendering the judgment, any law, custom or asage to the contrary notwithstanding.

SEC. 70. And be it further enacted, That from and after the passage of this act in all suits, actions, causes and prosecutions, which shall or may be tried in any court of record Peremptory within this state, each party shall have the challenge to right of challenging three jurors, without three jurors. shewing any cause therefor : Provided however, that nothing herein contained, shall be so construed as to extend or abridge the right of peremptory challenge in cases made capital by the laws of this state.

Sec. 71. And be it further enacted, That it shall be the daty of every circuit court within this state, and of the supreme court respec. C. C. to sptively, to appoint by a rule of court, some day point return days of exein each month, as general return days of exe- cution, cutions.

SEC. 72. Each and every charge of incest, fornication, adultery or whoredom made by a- Charging a ny person, against a female, shall be action-female with able, and is hereby placed on the same foot- having illicit ing and subject to the same rules and regula- connexion tions, it would be if the charge were of a criminal nature, and the person committing the same, if found guilty thereof, would suffer death or other degrading pains and penalties.

o bear date from the time

Form of bond

Repealing clause.

Sec. 73. Allacts and parts of acts heretofore made by the late Perritorial government, or this state, respecting the practice and proceedings in actions at law and suits in chancery, be, and the same are hereby repealed; and this act to take effect and be in force from and after its publication.

-: (D: ----CHAPTER IV.

AN ACT regulating the jurisdiction and duties of Justices of the Peace.

APPROVED -January 28th 1818.

J. P. to commit, disto ball any personcharged with a orime.

To recognize witnesses.

To whom to nizance.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana. That the jurisdiction of justices of the peace in criminal charge or let cases within this state, shall be co-extensive with the limits of the county where they shall be respectively chosen or reside; and they shall be conservators of the peace throughout the same: and each justice of the peace is author. ised and required on view, or complaint made on oath, to cause any person charged with a crime to be arrested and brought before him, or some other justice of the peace in said county, and such person to commit, discharge, or let to bail, as the nature of the case may rereturn recog. quire, and recognize such witnesses as the nature of the offence shall or may require; conditioned, that such witnesses shall attend on the first day of the court to be holden in the county, before whom the offence shall be tried, to give testimony, and not depart without leave of the said court. & all recognizances thus taken shall be returned by the justice taking the same into the said court or courts in person, or be transmitted by him to the prosecuting attorney or the clerk of the proper county, at as early a time as may be convenient before the sitting of such court.

Sec. 2. In all cases of riots routs, affrays, J. P. to cause unlawful assemblies or breaches of the peace, arrrests for it shall be lawful and is hereby made the duty of justices of the peace, in their respective counties within this state, on view, or complaint upon oath, to cause such person or persons engaged in such riot, rout, affray, unlawful assembly or breach of the peace, to be forthwith arrested and brought before him, at, or as near the place as may be, and shall thereupon direct To summon a constable to summon a jury, to consist of a jury. twelve disinterested men, possessing the qualifications of electors, to be summoned, empanneled and sworn, true enquiry to make into such or any one of the above named breaches of the peace, of which the person or persons so arrested shall stand charged, and verdict give, according to evidence: and if any person or persons so arrested shall on the trial be found guilty, he or they, and each of them, shall be fined in any sum not exceeding twen- sury to assess ty dollars, to be assessed by the jury and found fine not exin the verdict, and returned to the said justice, ceeding 20 who shall give indepent thereon for the condollars. who shall give judgment thereon for the amount of such fine, and that the defendant or defendants stand committed until such fine, together with the costs of prosecution be paid. The trial shall be conducted in all respects as in other cases here n provided for. It shall When the he the duty of the sheriff or under sheriff in sheriff shall their respective counties, and the constables in attend as an their townships, to aid and assist in carrying court. this law into effect, by arresting all persons guilty of the above offences on being commanded by any justice, if the same shall have taken place within his view or by virtue of process which shall or may be issued on complaint summon witnesses jurors, and do and perform all such acts and duties as shall or may be necessary to carry this section into complete ef. prosecution to be comt is section shall be commenced within thirty in thirty days, days after the same shall have taken place;

I. P. after trial has commenced, may discontinue the same, in aggravated cases, and recognize the party to C. C.

twice for the same act, and provided also, that if it shall appear to the justice, from his own view, the complaint, or in the progress of any trial had no ler the provisions of this section, that the offence has been of a high and aggravated nature, and that twenty dollars would be an inadequate punishment, then, and in that case, it shall be the duty of such justice to recognize the defendantor lefendants, (and if a jury shall have been empanneled to dismiss the same) to appear on the first day of the next term of the Circuit Court, to be holden in and for the said county, with one security at least, together with the witnesses, in all respects as is provided for in the first section of this act, and such recognizances return as therein provided. Provided also, that nothing herein contained shall be so construed as to require the prosecuting attorney of any county, to attend to any prosecutions under the provisions of this act, which a justice of the peace is hereby authorised to hear and finally determine.

nor shall any thing herein contained be so

construed as to punish any person or persons

Provocation to commit an affray or peace.

tor.

prosecution therefor, when commenced.

Sec. 3. If any person or persons shall challenge another to fight at fisticulfs or with cudgels, or shall endeavor to provoke any person or persons to commit an affray or breach of the breach of the peace, every person or persons so offending shall, on conviction thereof, forfeit and pay for every such offence, a sum not exceeding three renalty there-dollars, nor less than fifty cents, to be collected as other fines; and every justice of the peace, of the proper county where the offence shall have been committed, shall have cognizance thereof; Provided, however, that such prosecution be commenced within ten days from the time the offence shall have been committed; and all fines and penalties imposed by the provisions of this act shall be paid into the county treasury where the offence was committed, within thirty days after the same shall have been collected, for the use of the

county seminary; and if any justice shall fail to pay over such money, the treasurer of the proper county shall sue for and recover the same of the said justice, in action of debt, and twenty five per cent. damages.

Sec. 4. The powers of justices of the peace in this stateshall be co extensive with the of J. P. in cie townships in which they maybe respectively e- vil cases; lected and reside, and their jurisdictions in civil cases shall extend under the restrictions and limitations hereinafter provided, to any sum not exceeding fifty dollars; Provided, any justice of the peace may grant subpoenas for for witnesses for either party concerned in the cause pending, but such party shall not be allowed fees for travelling and serving the same if performed by himself: and the power of justices of the peace shall be co extensive with the county to summon witnesses: Provided also, that if any person or persons shall voluntarily appear before a justice of the peace and confess a judgment, in such case the jurisdiction of the justice shall extend to one hundred dollars, and execution on such judgment issue as in other cases, from which judgment there shall be no appeal. Provided however, it shall be the duty of every justice of the peace; whenever any person or persons shall so apply by mutual consent to confess judgment for any sum not exceeding one hundred dollars agreeably to the provisions of this act, to require Debtor to an oath or affirmation of the party so applying make oath. to confess any judgment, which oath or affirmation shall be as follows; to wit: I, A B, do solemnly swear (or affirm, as the case may be,) that I do not confess judgment in favor of Form there-(here name the person or persons in whose fa- of. vor the judgment is confessed) to defraud any of my creditors, but that I am justly indebted to (here name the person in whose favor the judgment is confessed) to the full amount I have confessed indgment; which oath or affirmation shall be made known to such person or

Subpornas.

Confession of judgment.

When the cred for of contessee may show want of con confessed.

In case of fraud such confession a pullity;

When confessee tiable to indictment

indement confessed shall and issur till 5 after.

kepi:

issue against householders.

Requisites of summons & of.

persons applying to confess judgment, by the justice before he administers the same, and before he enters the judgment. Frovided, also, that any creditor or creditors of the person or persons confessing judgment as aforesaid may within any time after such confession of judgment, and before the issuing execution theresideration for on, prove before the justice, who may enter up the jugdment such confession of judgment, the want of consideration whereon to form such judgment, or that such judgment was coofessed with a view or design to defraud some creditor or creditors of his, her or their just demand; in that case the judgment so aforesaid onfessed, shall be of no validity or effect, in law or equity; and the person confessing such judgment, as well as him, her or them in whose faver such judgment shall have been confessed, shall, upon confestor & con- viction thereof. in any court having competent jurisdiction, by indictment or presentment, be fined in any sum not exceeding the amount of Execution on the judgment so as aforesaid confessed. Provided, however, that executions shall not issue on any such confessed judgment until after the expiration of five months from the time of such monthsthere- confession, after which there shall be no stay unless agreed between the par es.

SEC. 5. Every justice of the peace shall keep a docket, in which he shall make fair and accurate entries of all actions and suits instituted before him, with his proceedings thereon, and if either of the parties require a copy of the proceedings the justice shall furnish the same.

Sec. 6. Where the defendant is a house. Summons to holder within the township, and resides within the same, a summons shall be the first process, to be issued by virtue of this act, on which summons the justice shall endorse the precise sum demanded by the plaintiff, together with the costs that have accrued, and the summons service there to be issued as aforesaid shall specify a certain time, not less than three, nor more than

twenty days from the date of such process and also a certain place at which the defendant shall appear, and be served at least three days before the time of such appearance, by re ding the same to the defendant, or by serving him or her with a copy thereof if required, but if be or she cannot be found by leaving a copy at his or ber house or place of abode, in presence of some person of the family of the age of fourteen years or upwards, who shall be informed of the contents thereof, and the constable serving such summons shall endorse thereon the time and manner of such service, constable to and subscribe his name thereto; and in all endorse &c. cases where process shall be served by leaving a copy at the defendant's house or place of abode, it shall be lawful for the justice to continue the cause from time to time, until the defe dant shall have returned to his home and receive notice of the pendency of such suit, may be and such continuance shall rest in the sound discretion of the justice, taking into consideration the circumstances of the case. Provided, that in all cases where it shell be sufficiently proven on oath or affirmation of any person, to the satisfaction of the justice, that the plaintiff will be in danger of losing his or her demand, unless the defendant be arrested, it shall be the duty of the justice to issue a warrant in issued anature of a capias, which shall be proceeded gainst housein as hereinafter provided; also that where the holder. plaintiff lives out of he county or township, and his demand shall be on bond, promissory when the note or bill, sent to any justice of the peace plaintiff lives for collection, in that case the justice shall de. out of me termine the most proper precept to secure the debt to the plaintiff, any thing herein contained to the contrary notwithstanding. Provided. also, that no person shall be bound to answer unto any summons or warrant in civil cases issued by a justice of the peace. in any other township except such township in which such defendant actually resides, or where the

When writ may be cone

Proceedings township.

Venue.

debtwas contracted or the cause of action arose. or where the defendant may be found, unless there shall be no justice of the peace within said township, who can legally issue said summons or warrant.

In what cases a warrant shall be issuede

Requisites thereof.

D fendant fail ng to give ball committed,

Form of bail bund.

SEC. 7. A warrant in nature of a capias ad respondendum, shall be the proper process under this act, in all cases where the defendant shall not be a resident and householder of the county where such process shall be issued; upon which the justice shall endorse the precise sum demanded, together with the costs that have accrued: and the said warrant shall be made returnable forthwith after service thereof, and the constable serving or executing the same, shall, according to the command thereof forthwith convey the defendant before the justice, who shall thereupon either cause the defendant to give bail for his, her or their appearing and abiding the event of said suit, or on neglect or refusal to give such bail, order the constable to convey him or her to the jail of the county, there to be kept in custody until the time appointed for the trial of the cause, which shall not exceed three days from the day of the return of the warrant, or the justice may direct the constable to hold the defendant in his custody until the plaintiff shall have notice and time to at end, not exceeding two days and proceed to trial, and the constable who serves such warrant shall endorse thereon the execution thereof, and sign his name thereto.

SEC. 8. The recognizance of bail to be taken as is above provided, may be in the foling form, to wit: State of Indiana Township, st. Whereas A B has been arrested and in custody, at the suit of C D, in an action of for the snm of : now therefore you, () P, do acknowledge yourself special bail in the said action, in the sum of

to be levied on your goods and chattels, lands and tenements, and for want thereof upon your bandy, if default be made in the condi-

tion of your recognizance; which condition is, that the said A B shall be and appear beand if judgment be given against fore him or her, that he or she shall pay the costs and condemnation money, or render his or her body in execution: acknowledged before me which recognizance shall remain with such justice, for the benefit of the plaintiff in the suit, and if the defendantshall not appear, at the time and place specified in the recognizance, and no sufficient reason be assigned to said justice why he or she does not appear, then the said justice may proceed to hear and determine the cause, in the absence of such defendant; and when the parties to any suit to be instituted by this act, shall appear at the time and place appointed for trial, the said justice shall proceed to hear and de- Jodgment by termine such allegation and proofs; and shall default. thereupon give judgment, with costs of suit according to law and equity; unless he shall think it proper on the application of either party to adjourn the trial, which adjournment shall not be for a longer time than twenty days. Provided, that if either party or a material witness shall live in another state or county, the party may, on good cause snown, by affidavit or otherwise, have the trial of the cause postponed for any time not exceed- nee mey coping two months.

SEC. 9. If on the return of any summons or cause, capias before any justice of the peace, the defendant or defendants shall make outh that he verily believes, he cannot receive a fair trial, owing to the prejudice of the justice before Change of whom the summens or capias shall be returned, or of the citizen of the township in which the said justice resides, or that the other party has an undue advantage over him in such township: in such case, a certified copy of the oath shall be filed with the justice who issued such summons or capias, before the same shall be called for trial, and such justice shall grant a

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change of venue before any other justice in the proper township, and if there be no other iss. tice in the township who shall be disinteres. ted to the parties named in such sum no is or capias, it shall be tawful for such justice to grant such change of venue to any justice of the peace in an adjoining township, who may be disinterested, and the same proceedings shall be had thereon, as if the same had been made returnable before him in the first instance.

SEC. 10. When the parties agree to enter

without process before any justice of the peace,

Trial by consent of partics.

any action herein made cognizable before him, such justice shall enter the same on his docket, & proceed to judgment & execution in the same manner as if a summons or warrant had issued served and returned; an l in all other actions instituted by virtue of the provisions of this act, where the plaintiff shall not appear by himself or agent, and it appearing that he was informed of the day of trial, and if his claim shall not be established by testimony either oral or written, the justice shall enter judgment against him for the costs : Provided the plaintiff shall not thereby be debared from renewing the action; but if it should be made appear, that his non attendance was owing to the definit of the constable in not giving him notice, the justice shall postpone the trial to a day certain, and the constable shall be liable for the attendance of the defendant, and also give notice to the plaintiff or his or her agent to attend, if he or she resides within the coun-

Constable failing to give notice.

ty.

Actions may

be renewed.

Nonsuit.

Sec. 11. If in any cause instituted under the provisions of this act, it shall appear at the trial thereof, that there is a balance due to the defendant from the plaintiff, the justice shall enter up judgment against the plaintiff in fa or of the defendant for the sum so appearing to he dae, with costs of suit, and such defendant shall be entitled to execution in the same man-

When judgment for defendant on balance due him.

ner as if such defendant had been plaintiff in the cause.

Sec. 12 If any defendant should not appear by himself, herself or agent, at the time If defendant and place appointed for trial, having had law. neglect to apful notice, and no just cause appearing for his pear, plant ff or her non attendance, the justice may, at the ment. request of the plaintiff, hear and determine the

cause and enter judgment.

SEC. 13. When any judgment has been entered against the defendant in his absence, if he appear before execution shall issue, and pay the costs, and request the judgment to be When a new opened, the justice shall grant a new trial and trial may be appoint a day therefor, of which the defendant shall notify the plaintiff, at least six days prior to the day appointed : Provided, that stay of execution shall only be prolonged from the date of the former judgment.

S. c. 14. Where there is no justice of the peace resident in the proper township, or the When jusustice shall be father, son or brother to either tice of an adthe plaintiff or defendant, then the justice who joining townis nearest and most convenient, in an adjoin- have jurising township, who is not interested, shall diction. have full and complete jurisdiction of any such cause or action.

SEC. 15. At any time before judgment is entered, the plaintiff and defendant agreeing thereto, may have the cause submitted to three disinterested men, who shall be chosen by the plaintiff and defendant as arbitrators, and if they be present, they shall hear and determine the cause on oath or affirmation, which shall be administered by the justice; but if the arbitrators chosen be not present, the justice shall issue subpænas for them to attend, at a certain time and place fixed open, which shall be served by the constable or parties, as they may agree, and when the arbitrators are How they met and qualified, they shall hear and deler- shall proceed mine the cause, make out an award and sign the same, and make return thereof to the jus-

Arbitrators how chosen.

Their award final unless obtained by fraud, &c.

tice, who shall enter the same on his docket and thereon render judgment, which judgment rendered on such award shall be conclusive. both to the plaintiff and defendant, unless it shall appear to the circuit court on an appeal. or to the justice of the peace who rendered such judgment, and within ten days after the rendition of the same, that such award was obtained by fraud, corruption or other undue means, and whenever satisfactory proof thereof shall be adduced before such justice, within the period aforesaid, it shall be lawful for such justice to open his judgment, and set such award aside, and thereupon to proceed to such final trial and judgment as if such award had never been made; and all arbitrators acting under the provisions of this section shall be entitled to fifty cents per day for their services, and the same shall be taxed and collected as other costs are.

Their compensation.

cate the a ward for traud &cc.

ment of a justice of the peace, rendered upon an award according to the provisions of the C. C. may va preceding section, the circuit court shall be satisfied that such award was obtained by fraud, corruption or other undue means, they shall order such award to be vacated, and proceed to hear and determine the cause upon its merits as in other cases of appeal; and if upon appeal as aforesaid, it shall not appear to the court that the award was obtained by fraud. corruption or other undue means, they shall proceed to final judgment in such manner as

Sec. 16. If upon an appeal from a judg-

Sec. 17. If any person or persons shall conceive himself, herself or themselves aggriev ed by any judgment of a justice of the peace, where such judgment ren lered shall exceed three dollars, exclusive of interest thereon and costs of suit, it shall be lawful for any such person or persons, on paying all legal costs which shall have accrued previous to such appeal, to appeal to the circuit court at any

the justice of the peace ought to have done.

timo within thirty days after the rendition of such judgment, by entering into a recognizance with at least one sufficient surety, in the Security for full amount of the debt and costs that may ac- debt & costs. crue in the circuit court ; which recognizance shall be taken by the justice; and it shall be the duty of the justice of the peace, if execu-execution, if tion has issued, to recall the same, and there- issued; upon the justice who gave such judgment, shall send a transcript thereof to the clerk of J. r. to send the circuit court of the county in which such upa transappeal is made, together with the original the proceednote or notes, bill accounts or other documents ings with filed by either of the parties in the cause, on or note, account before the first day of the term next to be hol- of C. C. on or den after such appeal, and all further proceed- before 1st ings before such justice shall be stayed from day of next the time of entering such appeal, and the per- succeeding son or persons so appealing shall cause an entry of the appeal to be made with the clerk of appeal to be the circuit court, and the plaintiff in the suit entered in below shall be plaintiff in the court above ; and clerk's office. after such entry shall be made, such appeal Plaintiff beshall stand upon the docket as all other suits, above. and the court shall hear and determine the same in a summery way, unless either party C. C. may do shall require a jury, when the same shall be termine in a tried in the same manner as all other cases, way. except that no pleadings shall be required; no pleadings. but the court may in their discretion, require the plaintiff to state truly in writing the nature of his demand, and the defendant of his defence. The costs which shall appear to have Costs below been taxed by the justice by reference to the taxed with transcript of the record and proceedings sent costs above. up, shall be included in the costs above: Prorided, that if the appellant shall fail or neglect to enter the appeal within the time provided ceed when for in this section, the clerk of the circuit court appelant shall (on application of the appellee) shall certify fail to enter accordingly, and such certificate being lodged appeal, with the justice of the peace who gave such

judgment, shall be sufficient authority for him

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low, plaintiff

How appela

An appeal to C. C. may be had in 30 days from rendition of judgment.

When the shall issue a supersedeas.

cution.

to issue execution on such judgment in the same manner as if no appeal had been taken : Provided also, I the person or persons in When appel- whose favor judgment shall have been renderlant shall pay ed shall appeal, and shall not recover mere costs on affir- that was recovered before the justice, in such case the appellant shall pay all costs accruing on such appeal: Provided further, that where the appellant executes a recognizance to be taken by the justice, and files the same in the office of the clerk of the circuit court with seenrity as is required in this section, the clerk clerk of C. c. of the circuit court shall issue a supersedeas staying all further proceedings on the judgment so appealed from, until a decision in the circuit court may be had thereon; and upon the receipt of such process, the officer having any execution relative to such judgment, shall stay all further proceedings.

SEC. 18. If any person against whom judgment is entered for any sum, shall enter such bail as shall be deemed sufficient security for the amount of said judgment, interest and costs, and shall have the same entered on the docket of the justice who gave such judgment, Stay of exe. such person shall have stay of execution, if the sum shall not exceed six dollars, thirty days; if over six and not exceeding twelve dollars, sixty days If over twelve and not exceeding twenty dollars, ninety days; if over twenty and not exceeding thirty dollars, one bundred and twenty days : if over thirty and not exceeding forty dollars, one bundred and fifty days : if over forty and not exceeding fifty dollars, one hundred and eighty days; and if the person against whom judgment was rendered shall refu e or neglect to enter such bail, and shall fail to pay to the person or persons recovering such judgment or his agent, the full amount of debt, together with the costs of suit, it shall be the duty of the justice who gave such judgment, on the request of the party recovering the judgment, or his agent, to

grant execution thereon, returnable to such When exejustice within thirty days thereafter, commanding the constable to levy and make the debt Returnable or damages and costs, out of the goods and in 30 days. chattles of the party, against whom the judgment was rendered; and for want of such property whereon to levy and make the same, to take the body of such party and convey him, the body. her or them to the jail of the county : Provideed, that if the defendant shall enter sufficient bail for the stay of execution within ten days. or previous to the sale of property taken as a. for said, the justice shall recall the same; and the sheriff or keeper of such jail is hereby required to receive the person or persons so taken in execution, and him, her or them safe. tive to keeps I keep, until the sum so recovered and the ing prisoner. costs of suit be fully paid, or he, she or them be legally discharged, and in default of such keeping, the sheriff or jailor shall be answerable to the party aggrieved, who shall have the same remedy against him, as is provided by the law in cases of escapes; and all property sold by execution shall be advertised by the constable, at three of the most public pla- Notice of ces in the township where the same was exe- sale how give cuted, at least ten days previous to the day of en. sale. Provided always, that where hall is entered for the payment of the debt and costs, the first process shall be an execution against the goods and chattles of the defendant, and if goods and chattles cannot be found of the defendant sufficient to satisfy the execution, and a return be made thereon by the constable, the justice, if required by the plaintiff, his, her or their agent, shall issue a scire facias against Proce dinga the bail, and the same shall be served and returned by the constable, in the same manner as summonses are served and returned, and

upon return thereof, the justice shall, unless

good cause shewn, enterjudgment, and forth-

with after demand, issue execution against

the bail for the amount of such judgment and

cution shall

Officer for want of charties to take

sheriff'r la-

costs, or such part thereof as shall remain unsatisfied, to be returned in the same manner as executions are in other cases.

How bail are to proceed when apprehensive of in-Bolvency of principal

Proviso for

THEY

further secu-

Sec. 19. Where any person or persons shall enter security upon the docket of any justice of the peace, for stay of execution, according to the provisions of the foregoing section, it such security shall become apprehensive that by delaying execution until the full term of the stay of the execution has expired, such security or securities may be compelled to pay the judgment, such security or securities may go before the justice of the peace, upon whose docket he or they stand as security, and make and file an affedavit that he or they are apprehensive of being compelled to pay the judgment in case the execution be further delayed, and thereupon, at the request of such security or securities, such justice shall issue an execution against the principal debtor or debtors, which shall be proceeded on as in other cases: Provided, that if within ten days after the levying such execution, the principal debtor or debtors shall give additional security to the satisfaction of the justice, for the stay of execution for the time not expired, and shall pay the costs of such execution, the execution shall be taken back and stayed; and the subsequent proceedings shall be the same as though no such execution had issued, except that in proceedings against such security or securities, a scire facias shall be issued against the person or persons last entering security in the first place, and no scire facias shall be had against the first security or securities.

SEC. 20. Whenever judgment shall be obtained against any person, who shall have en-

tered himself bail on the docket of any justice of the peace, agreeably to the eighteenth section of this act, the original judgment for stay of execution, on which such person was

entered bail, shall remain good and valid in law for the use of such bail, who may at any

time thereafter, sue out execution on such judgment against the goods, chattles and body of the defendant for the use of such bail, which shall be endorsed by the justice, and such bail shall also be entitled to a transcript of such judgment for his own use, which shall have the same force and effect as transcripts in ether

Sec. 21. In all cases where execution shall issue cajudgments rendered against any person or persons, and goods and chattles cannot be found to discharge the same, in case it shall be made known to the justice who issued such execution, that the person is possessed of ecution may lands and tenements, the justice shall, on application of the person, or his, her or their agent that recovered such judgments, forward a transcript of such judgment to the clerk of the circuit court, and the clerk shall file the said transcript in his office, and shall issue a scire facias against such person to appear at the next term of the circuit court and shew cause why execution should not issue, and in case such person neglects to attend, or does not shew cause, to the satisfaction of the court, why execution should not issue, the court shall direct execution against the goods and chattles, lands and tenements of such person, in the same manner as though judgment was obtained in such court.

Sec. 22. In all cases where the plaintiff shall not reside within the county in which he intends to bring suit. the justice before whom he intends to have the same entered, rity for sosts, may, previous to his issuing process, or entering the same, cause such plaintiff to enter sufficient bail, resident within his proper county, conditioned for the payment of all costs which may accrue upon such suit; which bail shall be, by such justice, entered on his docket, and signed by the bail, which bail shall be accountable for all such costs.

SEC. 23. In case the constable fails to make

For want of personal property how ex issue against

Ball may have execution vs. principal.

for neglet of duty.

Proceedings return as provided by this act, or makes false vs constables return, the justice shall, on application of the person or persons is whose favor execution has issue i, or his, her or their agent, issue a scire facias against the said constable, directed to any person he may think proper, and who will serve the same, commanding said coustable to appear and show cau-e, if any he can, why execution should not issue against him; and if the constable either neglect to appear within four days, or does not show cause why execution should not issue against him, then the justice shall enter judgment against such constable for the amount of such execution, together with costs; on which judgment there shall be no stay of execution. And such execution may be directed to any person the justice may think proper, and who will serve the same; who shall collect the amount of said execution, in the same manner as the constables by this act are authorized and bound to do, together with such costs as constables receive for similar services.

When justice may appoint a constable.

Src. 24. In all cases where it shall be necessary to have process served, either in civil or criminal cases, and the constable of the proper township shall be absent, or there he no constable in said township, it shall be lawful for any justice of the peace of said township to appoint a person willing to serve as constable, antil the return of such absent constable, or one shall be legally appointed as constable; and the person so appointed shall have the same anthority as any other constable, without giving security: but such justice shall stand as security, and be liable for neglect of duty or illegal proceedings : and the said constable shall receive the same fees and compensation as constables are entitled to by law for similar services.

J. P. to re-

SEC. 25. It is hereby made the daty of justices of the peace to receive from the constables over money. all monies by them collected, and pay the

same over to the person or persons entitled thereto; also all monies by them collected without execution, or received for the use of any person or persons in their official capacity. And if any justice shall fail to pay over any money by him so collected or received, when thereto demanded by the person or persons entitled to the same, his or their agent, at the office of such justice, he being present, it shall be lawful for such person or persons aforesaid to complain to some justice of the peace of that tailure theretownship in which the delinquent justice re- of. sides, if any ti ere he, and if no justice resides in the township capable of acting, then to some justice of an adjoining township, whose duty it shall be immediately to issue a summons to the constable of his township, commanding him to summons such delinquent justice, forthwith to appear before him, and shew cause, if any there Ie, why judgment should not be rendered against him, for the amount of money by him so collected and not paid over; and if such delinquent justice shall not shew good cause, the justice issuing the summons shall render judgment against him for the amount of money so collected and not paid over, together with ten per centum damages thereon; and in such case there shall be no stay of execution.

Sec. 26. In all cases where the constable shall make it appear to the satisfaction of the In what case justice, that he has been deprived of an on- an alias excportunity of levying any execution directed to cution may him, within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and make a return to the justice who issued the same to that effect: such justice is hereby authorised and required to issue another execution, if thereunto required for the bal. ance or the whole of the execution remaining unsatisfied; which shall be served and return.

ed in all respects as other executions,

Proceedings.

Witnesses failing to obey subpœna.

Sec. 27. When any person or persons shall be lawfully subpensed to attend and give tes. limony, in any suit instituted before any justice of the peace, such witness failing to attend at the time and place specified in such subpæna, and no reasonable cause being given for his or her non-attendance, every such witness shall forfeit and pay a fine, not exceeding three dollars, at the discretion of the justice, and moreover be liable to the party injured. for such damages as the person or persons shall sustain, for the want of such witness, to be recovered before any justice of the peace, or court having cognizance thereof; and every justice before whom any cause is depending or may be decided, shall issue an attachment for every person so failing, on the application of the person who may be injured thereby. Provided however, that if any person shall order a subpæna for more than two witnesses to prove any one fact, the person so ordering the subpæna shall pav such witness or witnesses, or in case any witness shall be subpensed and not examined by either of the parties, the party ordering such subporna shall pay such witness, except the defendant confess judgment, or where the plaintiff shall be non-snited.

By whom paid in certain cases.

Compensafor keeping live stock.

When paron oath.

Sec. 28. When any living animal shall be taken in execution, it shall be the duty of the tion to officer Justice who issued the execution, to make such allowance to the constable for keeping the sama, as he may think reasonable, not exceeding twenty-five cents per day for a horse, and in the like proportion for other animals.

Sec. 29. In all trials in cases of debt or accounts before any justice of the peace, it shall be lawful for the plaintiff, if the defendant denies the debt, to require said defendant to anties to answer swer on oath to the charge, but if thereupon the defendant shall deny the same, the plaintiff shall not have judgment, unless he shall establish his claim by one or more credible Witness or witnesses; and whenever the des

fendant shall alledge matter in payment of the said plaintiff's demand, he may in like manner, and subject to like rules, require the said plaintiff to answer such allegations on oath, and on neglect or refusal to answer, the justice may use compulsory proceedings for contempt, so as to procure answers, according to the true intent and meaning hereof. Provided however, that nothing herein contained, shall be so construed, as to authorize either party to be sworn unless thereto required by the adverse party.

§ 30. In all civil cases (where the sum in con- Trial by jury)

troversy shall exceed twenty dollars) to be tried before any justice of the peace, at the request of either the plaintiff or defendant, such justice shall direct the constable to summon and cause to appear before him, twelve lawful citizens of this state, resident of such county, neither of whom shall be related to either party or interested in such suit, who shall be empanaelled to try such cause. Provided, however, before they proceed therein, such justice shall administer to them the following oath or affirmation; (viz.) You and each of you do so- Juror's oath. lemnly swear or affirm, (as the case may be,) that you will well and truly try the cause submitted to you by A B plaintiff, and C D defendant and a true verdict give according to evidence to the best of your judgment and ability, so help you God. (omitting in case of affirmation the words "so help you God" and using the following, "under the pains and penallies of perjury." And it shall be the duty of the justice to enter up judgment upon the verdict of such jury, in favor of either the plaintiff or defendant, as the case may be, and proceed to execution as in other cases.

Sec. 31. If any person or persons shall claim Right of proany property taken in execution by any constable, other than the person against whose prop- uned. erty such execution shall issue, the right of property shall be tried by a jury of five dis-

creet house holders, to be resident in said county, to be summoned by the constable who executed the property, and it shall be law lat for the constable to administer an oath to said jury, to inquire into and try the right thereof; and if such jury shall find the right of such property to be in the claimant or any other person or persons than the defendant in such execution, the said constable shall deliver up such goods, chattels and effects, to the person or persons, his, her or their agents, in whom the right of property shall or may be found by the jury; and the constable shall not be liable to any prosecution, for the taking of such goods. chattels, rights and effects, if found in the possession of the defendant, or directed to be taken by the plaintiff; and all reasonable costs accruing by such enquiry, shall be taxed by the justice against the plaintiff in execution; but if the right of property be found in the defendant, then such costs shall be paid by the claimant, and the said justice shall tax the same, and enter up judgment therefor; and in all ca-Appeal to C. ses where the right of property shall be disputed by any claimant, and trial had thereon, the decision may be appealed from, to the Circuit Court of the proper county, as in other cases.

Mode of transferring judgments from one J. another.

Sec. 32. In all cases where a transcript of a judgment of any justice of the peace, within this state, shall be certified and signed by the justice rendering such judgment, and delivered P's docket to to another justice of the peace, for the purpose of enforcing the execution of the same; the justice to whom the transcript is delivered, shall make an entry thereof on his docket, and shall issue a scire facias against the apparent defendant, in such transcript, requiring such person to appear and shew cause (if any there be) why execution should not issue against him for the amount of the judgment and costs, as stated in said transcript; or such justice may issue a warrant in nature of a capias ad

respondendum against such defendant; and in either case, if the defendant cannot prove to the satisfaction of the justice, that he had paid the whole amount of the debt as stated in the transcript, the justice shall hold him to bail, or issue an execution for the same, or such part t ereof as shall appear to remain unsatisfied, in the same manner under the same regulations, as the ju-tice before whom the proceedings were originally had, might or could have done, had the defendant remained within his township or county: Provided, stay of execution shall only be had from the date of the original judgment. And in all cases where any person or persons, who may have entered security for the stay of execution upon any justice's docket, shall remove from the county where such jus- ys. bail remotice resides; and upon proceeding as herein ving out of before provided against the original defendant, the county. the constable shall return that no goods or chattels can be found, to satify the judgment, the justice before whom such security was entered, upon application of the pla ntiff or his agent, shall give a transcript of the judgment, recognizance of bail for stay of execution, and other proceedings; upon which transcript any justice of the peace of the county where one or more of such securities may reside, may proceed against such security or securities by scire facias or capias ad respondendum, as in other cases of transcript: Provided, however, any justice of the peace may issue an execution J. P. may ison any judgment on his docket against any person or persons, or his or her goods and chat- dent in the tels, and the constable to whom the same is county. directed, is hereby authorised to serve the same in any part of the county where such person or persons, or his or her goods and chattels may be found. If any justice of the peace of this state shall refuse or neglect to give to cither party, in any cause tried before him, a certifled transcript of his preceeding in such trial. or to perform any other duties required of him

Renalty for neglect of duty in all cases.

To what amount and in what cases J P shall have jurisdiction in civil actions. by the provisions of this act, and shall not render a reasonable excuse therefor, he shall be fined in any sum not exceeding one hundred dollars, by presentment or indictment, in any court of competent jurisdiction, and moreover be liable to the suit of the party injured; provided, the person demanding the same shall tender to such justice his legal fees for such transcript or other proceeding.

Sec. 33. Nothing in this act shall be so construed as to give to a justice of the peace jurisdiction in any action or suit for the recovery of damages for any tresspass, wrong or injury done to or committed against the real or personal estate, or person of another, where the damages claimed shall exceed twenty dollars ; nor in any case of trover and conversion. where the damages claimed shall exceed twenty dollars; nor in any case of rent, where the rent claimed exceeds thirty dollars; nor in any case where the title of lands or tenements shall come in question; nor in actions of slander; nor in any action for the recovery of damages for the breach of any marriage contract.

Sec. 34. All laws and parts of laws heretofore in force in this state, relative to the duties and jurisdiction of justices of the peace, prior to the first day of December, 1817, be and the same are hereby repealed. This act to be in force from and after its publication.

FORMS FOR THE USE OF JUSTICES OF THE PEACE.

Form of a Summons.

State of Indiana, county, Sct.
To constable township, Greeting:
You are hereby commanded to summons to appear before me , a justice of the peace of said township, on the day of at o'clock on said day, to answer in a

plea of debt or damages, (as the case may be) under fifty dollars; and of this summons make due return. Given under may hand and seal this day of 181

S M, j. p. (SEAL.)

Form of a Capias.

State of Indiana, county, Sct.

To constable of township, Greeting:
You are hereby commanded to take the body
of and him forthwith bring before me,
a justice of the peace for said township, to
answer in a plea of debt or damages, (as
the case may be) under fifty dollars; and of
this writ make due return. Given under my
hand and seal, this day of 181

S. M, j. p. (SEAL.)

Subpæna.

State of Indiana, county, Sct. constable of township, Greeting: You are hereby commanded to summons to appear before me a justice of the peace for said county, on the day of 181 at my house, (or as the case may be) and the truth to say in a matter of controversy wherein is plaintiff and is defendant, in behalf of the plaintiff or the defendant, (as the case may be) and this he shall in no wise omit under the penalties prescribed by law; and of this subpæna make due return. Given under my hand and seal, this 181 S M, j. p. (SEAL.)

Judgment.

R S, plaintiff,

vs.

J D, defendant,

Debt or damages, (as the case may be.)

This day came the plaintiff and the defendant, and the cause and the proceedings beingfully heard and inspected and all things touching the same, therefore it is considered that the plaintiff recover of the defendant dollars, with interest thereon from the day of until paid, with costs of suit, and the defendant in mercy, &c. or the plaintiff in mercy, (as the case may be.)

Execution. State of Indiana, county, Sct. To constable of township, Greeting: WHEREAS obtained judgment against before me, a justice of the peace for dollars with interest said township, for thereon from the day of until paid, together with costs on the day of you are therefore commanded, of the goods to cause to be and chattles of the said made the said debt, interest and costs, by distress and sale threof, returning the overplus, but for want of such if any, to the said property whereon to levy, then take the said to the jail of said county, there to be detained until the said debt and costs that may accrue, shall be paid, or otherwise legally discharged; and of this execution make due return. Given under my hand and seal, this S M, j. p. (SEAL.) day of 181

Warrant for an assault.

county, Sct. State of Indiana, To any constable of said county, Greeting :-WHEREAS complaint has been made before me, one of the justices of the peace in the coanty aferesaid, upon the oath of of the aforesaid county, did on the violently assault and beat him day of in the county aforesaid; at these are therefore to command you to take if he be found in your county, and him safely keep, so that you have his body forthwith before me, or some other justice of the peace for said county, to answer unto the said complaint, and further to be dealt with according to law. Given under my hand and 181 seal, this day of

S M, j. p. (SEAL.)

Form of a Recognizance.

State of Indiana, county, Sct. BE it remembered, that on the day of A B and C F, perin the year sonally came before me, one of the justices of the peace for said county, and severally acknowledged themselves to owe to the state of dollars each, to be levied on Indiana their respective goods and chattles, lands and tenements, to the use of the said state, if default be made in the condition following, to wit :- The condition of this recognizance is such, that if the above bound A. B. shall personally appear at the next circuit court to be holden for the said county, on the first day of the term, then and there to answer (here state the offence) and abide the judgment of the court, and not depart without leave, then this recognizance to be void and of non effect, otherwise to remain in full force and virtue in law. (Or if the recognizance be to compel the attendance of witnesses on behalf of the state, the condition should run thus,) The condition of this recognizance is such, that if the aforesaid A B, shall personally appear at the next circuit court to be holden in and for said county, on the first day of the term, to give testimony on behalf of the state, and the truth to say on such matters as shall be then and there required of him or her, and not depart thence without leave of the court, then &c .-Taken and acknowledged at in the year 181

Form of a Search Warrant.

State of Indiana, county, Sct.
To any constable of the county aforesaid, Greeting:—

Whereas it appears to me one of the justices of the peace for the county aforesaid, that the following goods and chattles (here describe the goods, property or articles) have within days last past, by some person or persons unknown, been feloniously taken

and carried away out of the hands or from the premises of of the county aforesaid. and that the said doth on oath (or affirmation, as the case may be) declare that be verily believes, that the said goods or a part thereof are concealed in the (here describe the place to be searched) in said county. These are therefore in the name of the state of Indiana, to authorise you, with the necessary and proper assistance, to enter in the day time into (here describe the place aforesaid) and there diligently to search for the said goods and chattles, and if the same or any part thereof he found upon such search, that you bring the goods so found, and also the body of the said forthwith before me, or some other justice of the peace for said county, to be disposed of and dealt with according to law. Given under my hand and seal, this day of S M, j. p. (SEAL.) 181

Form of a Warrant for the peace or good behavior.

State of Indiana, county, Sct.
To any constable of the county aforesaid, Greeting:
WHEREAS hath this day made oath

before me, a justice of the peace for the county aforesaid, that he hath been threatened by

of the county aforesaid, and verily believes that said will destroy his property or do some bodily injury to himself or
family, (as the case may be) whereupon he
hath prayed surety of the peace. These are
therefore to command you to apprehend the
said and bring him forthwith before
me, or some other justice of the peace for said
county, to find surety for his personal appearance at the next circuit court to be holden for
the said county, and in the mean time to keep
the peace especially towards the said
Given under &c.

Form of a Recognizance in case of an appeal.

In the suit of against I,
do acknowledge myself bail for
appellant, for the sum of dollars, to be
levied on my goods and chattles, lands and
tenements in case said appellant fails to pay the
debt and costs that may accrue. Taken and
acknowledged before me, a justice of the peace
for the county aforesaid, this day of
181 S M, 1. p. (SEAL.)

Form of a Mittimus.

State of Indiana, county, Sct.

A B, a justice of the peace in and for said county, to the keeper of the jail of said county,

Greeting:

WHEREAS C D. on the day of in the year-personally appeared before me, and made oath that h F, on the day of in the year -- at the county of -- in the state of Indiana aforesaid, did (here insert the charge fully as sworn to) and whereas also, the said E F hath been arrested on the above charge, and brought before me, and after mature deliberation and a proper hearing thereof, hath been by me adjudged guilty. Therefore, in behalf of the said state of Indiana, I command you that you receive the said E.F into your custody in the proper jail of the said county, there to remain until he shall be delivered from your custody by due course of law. Given under my hand and seal, this-day of ___in the year of our Lord___

A B, j. p. (SEAL.)

Form of an affidavit on which to issue a State Warrant.

State of Indiana, county, Sct.

Before me, A B, one of the justices of the peace for the county aforesaid, personally came C D, who being duly sworn according to law, deposeth and saith, that on the—day J 10

of—at— (here describe the crime or offence) was perpetrated on the body or goods (as the case may be) of E F, of—by a certain G H, late of—and that he verily believes that a certain G H, late of—is guilty of the facts, or that he has been aiding and assisting in the commission thereof: further this deponent saith not. Sworn and subscribed to before me A B, j. p. C D.

Form of a Writ of Attachment.

County, Sct.

State of Indiana, to any constable Greeting :

WHEREAS A B, hath this day made oath that C D absconds, to the injury of his creditors as he verily believes; you are therefore hereby commanded to attach the goods and chattles rights and credits, monies and effects of the said C D, which may be found in your township, agreeably to law. And whereas A. B hath made oath that he does verily believe that E F is indebted to (or has property as the case may be) of the said C D, you are therefore commanded to summons the said E If, agreeably to law, that he appear before me a justice of the peace within said township, on the day of 181, then and there to answer under oath, touching the credits or property of the said C D, within his or her knowledge or possession; hereof fail not, & of this writ make due retun according to law. Given under my hand and seal, this -day of-181-. S M, j. p. (SEAL,)

Oath to be administered previous to issuing Warrant for distress.

I, L L, (or X S, lawful agent of L L,) do solemnly swear or affirm, (as the case may be) that A T is justly indebted to me (or L L, as the case may be) in the sum of—dollars and—cents for—years rent of (here des-

cribe the premises) situated in—township, in—county, on the—day of—in the year—; and that I have reason to believe there will be danger of loosing said debt or rent thus due, by proceeding to collect the same in the usual way of collecting debts.

Warrant of distress for rent.

State of Indiana, county, Sct.

To A B, constable of—township, of the county aforesaid, Greeting:—

You are hereby authorised and required to distrain the goods and chattles in the dwelling house (or in and upon farm, lands and premises, as the case may be) of BC, situated at ——in the township of —— and county aforesaid, for ——dellars and ——cents, being ——years rent (or part of ——years rent, as the case may be) due the ——day of ——in the year 181——, to LL for the same; and proceed thereon for the recovery of the said rent, as the law directs. Given under my hand and seal, this ——day of ——in the year ——

CHAPTER V.

AN ACT to reduce into one act, all the acts and parts of acts relative to Crime and Punishment.

APPROVED - January 29th 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That, if any person or persons shall levy war against the state of Indiana, or adhere to its enemies, giving them aid and comfort, such person or persons shall be adjudged guilty of Treason, and upon confession of the facts in open court, or on conviction by a jury of twelve men, shall have judgment of death, which judgment shall be executed by hanging the person or persons

Treason.

Punishment therefor.

so convicted, by the neck until they be dead.

Sec. 2 If any person or persons of sound memory and discretion, unlawfully killeth any reasonable creature, in being and under the peace of this state, with malice aforethought either express or implied, the person or persons so offending, shall be adjudged guilty of murder, and upon confession or conviction thereof by a jury of the county, shall have judgment of death,

Sec. 3. If any person or persons shall unlawfully kill any person or persons without malice aforethought, the person or persons so offending, shall be adjudged guilty of manslaughter, and upon conviction thereof shall have judgment of fine, imprisonment and whipping, at the discretion of the jury : Provided nevertheless, that if any person or persons, in the just and necessary defence of his, her or oring when their life or lives, or the life or lives of any other person or persoss, shall kill or slay any person or persons attempting to rob or murder, in the field or highway, or to break into a dwelling house, if he, she or they cannot with safety to himself, herself or themselves otherwise take the felon or assailant, or bring him, her or them to justice, he, she or they shall be holden guiltless.

SEC. 4. If any person or persons shall break and enter into a mansion house, store house, out house or boat, with an intent to commit a felony, in the night time, the person or persons so offending, shall be adjudged guilty of burglary, and upon conviction thereof, each person so convicted, shall receive upon his or her bare back any number of stripes, well laid on, not exceeding thirty nine, and be imprisoned any length of time not exceeding six months, and be fined at the discretion of the jury. And if the person or persons so offending, shall steal any goods from the house so entered, the person or persons so offending, shall restore the goods so stolen to the owner

or owners thereof; but if the goods so stolen renalty for shall not be returned, the person or persons failure thereso offending shall restore double the value thereof.

SEC. 5. If any person or persons shall vio-Robbery.

lently, feloniously and forciby take from the person of another, any goods or money to any value by violence, and putting in fear, the person or persons so offending shall be adjudged Punishment. guilty of robbery, and upon conviction thereof shall receive on his or her bare back not ex- Money to be ceeding one hundred stripes, and be impris- restored. oned and fined at the discretion of a jury, and shall moreover restore the money or thing so Penalty for taken to the owner or owners thereof; and fadure thereshall moreover if the goods or things be not of. restored. pay to the owner or owners two fold the value thereof.

SEC. 6. If three or more shall assemble Unlawful asthemselves together to do any unlawful act, sembly. and part and separate without doing it or making any motion towards it, the persons so offending shall be fined in any sum not exceeding one hundred dollars.

SEC. 7. If three or more persons shall meet to do an unlawful act, upon a common quarrel, and shall make some advances towards it, they shall be deemed guilty of a rout, and upon conviction shall be fined in any sum not ex. Punishment. ceeding one hundred dollars each, or imprisoned not exceeding sixty days each.

Sec. 8. If three or more persons shall actually do an unlawful act of violence, either with or without a common cause or quarrel, as if they beat a man or pull down an enclosure or enclosures, or even do a lawful act in a violent and turbulent manner, the persons so offending shall be deemed guilty of a riot. and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars each, or suffer imprisonment not exceeding one bun dred and twenty days each, in the common jail of the proper county.

Punishment.

Rout.

Rot.

Burglary.

Murder.

Punishment.

Manslaugh-

Punishment.

proviso de-

1 omicide is

justifiable.

Ponishment.

Sal n goods La restoPerjury.

Punishment.

Penalty for administering voluntary oaths.

Forgery.

Of deeds records and wills.

Of bank bills and notes.

Panishment therefor.

Sec. 9 If any person having taken a lawful eath, and the same has been administered to him or her, in some judicial proceeding, and in all such cases as the law requires an oath, who shall swear wilfully, absolutely and falsely, in a matter material to the issue or point in question, he or she so offending shall be deemed and adjudged guilty of perjury, and upon conviction thereof shall receive upon his or her bare back, any number of stripes not exceeding one hundred, fined in any sum not exceeding one thousand dollars, suffer imprisonment in the common jail in the proper county for any term not exceeding six months, and be disfranchised, and forever after be incompetent to give evidence in any court in this state; and if any justice of the peace or any other person who may be authorized by the laws of this state to administer oaths, shall administer what are called voluntary oaths, or such as are not expressly sanctioned by law, he shall on conviction thereof be adjudged guilty of a misdemeanor, and shall be fined in any sum not exceeding one thousand dollars.

Sec. 10. If any person or persons shall fraudulently make or alter any writing to the prejudice of another person or persons right, he or she shall be deemed guilty of forgery; and if any person or persons shall forge or make, or knowingly publish or give in evidence any forged deed, record, or will, with an intent to affect the right of real property, either freehold or other estate, he or she shall be adjudged guilty of a high misdemeanor; and if any person or persons shall forge or alter any bank bill or bills or note or notes or other security or securities, knowing the same to be forged and spurious, he or she shall be adjudged guilty of a misdemeanor; and the person or persons upon a conviction of either of the aforesaid offences, shall receive judgment of fine and imprisonment, and whipping: Provided, nevertheless, that the fine shall not exceed two thousand dollars, nor the imprisonment be more than six months, and receive not more than one hundred stripes.

SEC. 11. If any person or persons in this state shall sign, issue, pass, circulate or ex. The issuing change, any due bill, promissory note, or note and passing an purporting to be a beat page or other purporting to be a bank note, or other instru- or bills &c. ment of writing, for the payment of any mo other than ney or property, or performing any contract or those con-Company secret society anget of many Bank name of the Company, secret society, or set of men, in this maker, unstate, other than these who are expressed by lawful. name, upon the face of such due bill, promissory note, or note purporting to be a bank note, or instrument of writing, so as to give a credit and trust in some person. company, or set of men, unknown to the holder of such bill, note, or other instrument aforesaid, besides the signer or signers thereof, such person or persons so offending shall, on conviction thereof, by indictment before any court having jurisdiction thereof, be fined in any sum not exceeding ten thousand dollars, nor less than ten dollars, at the discretion of the jury who tries the same, together with the costs of prosecution, and moreover be liable to the action of the person or persons aggrieved. Provided, however, this act shall not be construed so as Proviso in fato affect any company or bank, chartered by vor of charthe authority of this state, any state of the U. tered banks nited States, or the United States, or any mercantile house, for any note, due bill or other instrument of writing, on common paper, in common writing.

SEC. 12. Every person or persons who shall Signer or ensign, subscribe, test or endorse, any due bill, dorser liable promissory note, or note purporting to be a to pay the a. bank note, or other instrument of writing, for mount. the payment of any money or other property, or performance of any contract or covenant, (as aforesaid in the 11th section of this act) as agent, cashier, president or endorser, shall be liable for the whole amount of such note, pre-

penaltythere-

And liable to a penalty.

missory note or bill, as last aforesaid in their individual capacity, and shall furthermore up on conviction thereof by indictment before any court having jurisdiction thereof, be fined in any sum not exceeding ten thousand dollars, nor less than ten dollars, at the discretion of the jury who tries the same.

Person passing notes. Sec. hable to pay amount thereof.

And liable to

a penalty.

Sec: 13. If any person or persons shall assign pay, transfer or pass to any person, any such note or notes, or instrument of writing, knowing the same to be of the nature and quality described in the eleventh section of this act, in payment of their just debts, or in exchange for any goods or other valuable consideration, they and each of such persons so offending and circulating such note or notes or instrument shall be answerable and responsible to the holder of such note or notes or instruments of writing to the full amount thereof, and be moreover liable to the penalties contained in the twelfth section of this act. Provided, however, that no prosecution by virtue of the provisions of this act, shall be sustained for the penalty of transferring such note or notes, unless an indictment shall be found within six months from the time of such transfer.

Passing coun terfeit bank

bills.

SEC. 14. If any person or persons shall pass or attempt to pass any counterfeit note or notes, bill or bills, purporting to be a bank note or notes, bill or bills, knowing the same · to be counterfeit, to any person or persons within this state, without first informing such person or persons that the said note or notes, bill or bills, is or are counterfeit, the person or persons so off nding shall upon conviction thereof, by indictment before any court having cognizance thereof be fined in four fold the amount of such note or notes, bill or bills so passed or attempted to be passed, and receive on his or her naked back any number of stripes not exceeding thirty-nine, at the discretion of the jury, and moreover be liable to the action of the party injured. And on the trial of any

Punishment.

person or persons under the provisions of this section of this act, the cashier of any chartered bank shall be a competent witness to prove competent that such note or notes, bill or bills is or are witness; counterfeit, as also the confession of the accused.

Sec. 15. If any person shall falsely make, forge, counterfeit, deface or corrupt, or cause Forgery, or procure to be made, forged, counterfeited. defaced or corrupted, or willingly assist in making, forging, counterfeiting, defacing or corrupting any deed. will, testament, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, bank note, post note or receipt or acquittance either for money or property, any auditor's warrant, certificate or other public security, whereby money may be drawn from the treasury of this state, or any county therein, with intention to defraud any person, persons, or company, he, she or they so offending, shall be deemed guilty of forgery, and on conviction by indictment or presentment, shall be fined in Penalty. threefold the amount or sum he, she or they have thereby defrauded or attempted to defraud.

SEC. 16. Whenever any justice of the peace shall receive satisfactory information, on oath picion of or affirmation, that there is reason to suspect counterfeitany person or persons is or are engaged in for- ing to issue ging or counterfeiting the notes or bills of any warrant. of the banks, whose notes are in current circulation, and that the materials necessary and usually used for such purpose, may probable be found in the possession of any person named at any particular house or place, it shall be lawful for such justice to issue his warrant to apprehend such person or persons so informed on, and cause him, her or them to be brought before him, and also to issue his search war. rant to a proper officer, to search such place so pointed out by the informer, for implements

of forging and counterfeiting and to have them

brought before him, and if upon examination the jus ice shall be persuaded of the probable guilt of the parties, it shall be the duty of such pustice to recognize such person, so concerned or supposed to be concerned in forging or counterfeiting, to the next circuit court of the county, and to retain in his hands such implements of counterfeiting, to be produced at the trial as testimony of the guilt of such person or persons informed on.

Sec. 17. If any person or persons shall

Counterfeiting coin of U

counterfeit the current coin of the United States, or alloy the same so as to make it less valuable, and if any person or persons shall bring false money into this state, counterfeit to the money current in this state, knowing such money to be false, to merchandize and make payment withal, such person or persons shall be taken and considered counterfeiters, and on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and suffer imprisonment for any term not exceeding

twelve months in the jail of the proper county.

Punishment.

Larceny,

Punishment.

SEC. 18. If any person or persons shall feloniously take, steal and carry away the personal goods of another, such person or persons so offending, shall be deemed guilty of larceny, and he, she or they so offending, upon conviction thereof, shall for the first offence, restore to the owner the thing stolen or pay to him the value thereof, or two fold the value if the thing stolen be not restored, and shall be fined in a sum not exceeding the value of the thing or goods stolen, and shall be whipped not exceeding thirty-nine stripes at the discretion of the jury; and upon a second conviction, restoration, restitution and payment shall be made to the owner as aforesaid, and a fine to the state as aforesaid, and the offender shall be whipped not exceeding one hundred stripes, and in like manner on every succeding conviction. If any person or persons shall receive

Receiving Stolen goods, any goods or thing as aforesaid, knowing the same to be stolen, he, she or they so offending, shall be deemed principally guilty, and upon conviction thereof, shall be punished accordingly. And if any person or persons shall Compound agree to compound for any stealing or goods ing therefore stolen, such person or persons, on conviction, shall forfeit and pay two fold the sum contracted about: Provided, that nothing herein contained shall be so construed as to debar the person from taking his own goods again: Provided also, that a father shall not be compelled to prosecute his child, being an infant or in a state of minority.

SEC. 19. Bonds, bills, notes, covenants or other instruments of writing, which have not raking bonds heretofore been considered as subjects of lar- buls, &c. larceny, shall be considered in the same light as ceny. other personal property of which larceny may be perpetrated, and punished as in the fore-

going section.

SEC. 20. If any person or persons shall maliciously or mischievously pull down any fence, destroy any ditch, hedge or other enclosure, Penalty for dwelling house, out house, barn, stable or crib, destroying enclosures, or any other species of property, real, person-dwelling roa al or mixed of another person, he, she or ses, &c. they so offending, shall be deemed guilty of a high misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding two fold the value of the property so destroyed.

SEC. 21. If any person or persons shall remove the body or corpse of any person interred in any burying ground, either, public or digging up private, for the purpose of dissection or any o- human bods ther purpose unauthorized by law, he or ies. they shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars : Provided, that nothing herein contained, shall be so construed as to prevent any relative of the deceased from taking up the budy of said deceased for the purpose of re-

interment in any other place, or for dissection.

penalty for destroying munitions of war.

Sec. 22. If any person or persons shall destroy any armour or warlike stores, or ordnauce, ammunition, habiliments of war, or any victualling provided for the troops, army or marines of the state of Indiana, such offender or offenders, shall on conviction thereof, be fined in any sum not exceeding two fold the value of the thing destroyed, and be imprisoned for any term of time not exceeding twelve months.

Benalty for obstructing the execution of process.

SEC. 23. If any person or persons shall obstruct the execution of any legal process, the person or persons so offending, their counsellors, aiders and abettors, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, due regard being always had to the importance of the process so obstructed.

ficer suffer ing an escape.

ther person effecting the

SEC. 24: If any officer of this state, whose duty it is to have custody of any prisoner, either on original, mesne or final process, shall zenalty on of negligently suffer such prisoner to escape, he shall be fined in any sum not exceeding ten thousand dollars; and if any such officer shall voluntarily permit any such prisoner to escape or go at large, the officer so offending, shall suffer the same punishment that the personso escaping with said officer's consent would have suffered had he not escaped and had been found guilty. And should any private per--On any o- son or persons effect the escape of any person lawfully imprisoned, such offender or offenders, their aiders and abettors shall be punished in the same manner as officers are punished in the foregoing part of this section. Provided however, that nothing in this section, shall be so construed as to inflict the punishment of death on any person or persons permitting, effecting or aiding and abetting any escape whatever, but in all cases where the prisoner or prisoners would have been pun-

ished with death, if he, she or they had been found guilty of the offence for which he, she or they were arrested, the jury who tries the person or persons who permitted, effected, aided or abetted such escape shall inflict such fine, pains and penalties as they may think proper.

Sec. 25. If any person or persons shall destroy or materially injure any jail, court Penalty for house or any other public building, the per- destroying or son or persons so offending, their aiders and defacing pubabettors, shall be fined in any sum not exceeding five thousand dollars, due regard being had to the magnitude of the offence.

Sec. 26. If any person or persons shall forcibly free any person or persons from arrest, rescue. knowing him, her or them to be under arrest, the person or persons so offending, shall be fined in any sum not exceeding ten thousand dollars.

SEC. 27. If any person or persons shall fre- What deems quently excite and stir up suits and quarrels ed barrary. between the citizens of this state, at law or otherwise, the person or persons so offending shall be deemed common barrators, and shall be fined in any sum not exceeding five hundred sanishment. dollars, and be imprisoned any term of time not exceeding three months.

SEC. 28. If two or more persons shall conspire to indict any innocent person or persons Conspiracy. of felony, falsely and maliciously, and such persons so indicted shall be acquitted, the persons so offending shall be deemed conspirators, and on conviction shall be imprisoned any term not exceeding six months, and be disfranchised, and forever be incapable of vo- punishment ting at any election authorised by the laws of therefor. this state, and be rendered incompetent to give evidence in any case whatever.

SEC. 29. If any judge or other person concerned in the administration of justice shall take any reward to influence his behaviour in his office, the person so offending shall be deemed guilty of bribery, and the person or persons offering

Penalty for a

Bribery.

yunishment.

such reward, & the person accepting the same, shall, on conviction be fined in treble the amount of such bribe, and be imprisoned any term not exceeding six mouths.

Embracery.

SEC. 30. If any person or persons shall attempt to influence a jury bypromises, persuasions, entreaties, money, entertainments and the like, the person or persons so offending shall be deemed guilty of embracery, and upon conviction thereof the person or persons so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned for any term of time not exceeding six months, and the said jury or any one or more of them. if they or any part of them shall suffer themselves to be embraced, the juror or jurors so embraced, upon conviction shall be punished by fine, in any sum not exceeding five hundred dollars, and be imprisoned for any term not exceeding six months, and forever after be in capable to take a seat as juror in this state.

SEC. 31. If any constable, coroner, sheriff,

clerk of the circuit court or justice of the peace,

or any other officer, entrusted with the admin-

istration of justice in this state, shall be guilty

of manifest and wilful negligence. in discharge

of the duties incident to the proper officer, to the

injury of any person, such officer or officers so

offending shall be fined in any sum not ex-

ceeding one thousand dollars, due regard be-

S. c. 32. If any officer or officers in this

ing had to the magnitude of the offence.

Punishment therefor.

*penalty for maifoasance. &c. in office.

state shall unlawfully take by color of his office, from any citizen any money or thing of value, that is not due to him or them, or more than is due, or before it is due, the person so offending shall be holden guilty of extortion, and on conviction shall be fined ten fold the amount so extorted. And all persons who shall exercise any public employment, under the authority of this state, and receive the fies

and emoluments thereof, shall be considered

officers to every intent and purpose, under the provisious of this section of this act.

SEC. 33. Anyperson or persons against whom any offence shall be committed shall be a competentwitness on a trial of an indictment orpre- party compesentment against the person or persons so offending, and all properly stolen shall be restored to the owner, and any person or persons having judgment against them shall stand in custody until sentence be performed.

Sec. 34. If two or more persons shall a- Penalty forgree to and shall actually fight in any public an affray. place to the terror of the citizens of this state, the persons so offending shall be deemed guilty of an affray, and on conviction thereof shall

lars, or suffer imprisonment for any term not exceeding five days.

SEC. 35. If any person or persons shall vi- penalty for a olently take and keep possession of lands and forcible entry tenements, with menaces, force and arms, and and detainer. without any authority of law, the person or persons so offending shall be fined in any sum

be fined in any sum not exceeding twenty dol-

not exceeding one thousand dollars.

Sec. 36. If any person shall contract to receive more than six per centum per annum, on Usury. any sum of money lent, or shall receive or contract to receive more than the sum aforesaid, on any contract where the principal shall not be hazarded, shall be deemed a usurer, and, on conviction thereof, shall forfeit the whole renaltythereof the interest of the principal upon which for. such exorbitant interest shall have been intended to have been received.

Sec. 37. If any person shall sell or vend a- renalty for ny unwholesome provisions, knowing the same selling unto be unwholesome, he, she or they so offend, wholesome ing, shall be fined in any sum not exceeding one hundred dollars.

Sec. 38. If any person or persons, male or female, shall marry a second time, the first husband or wife being alive, and the hond of matrimony still subsisting, and undissolved

Offended t nt witness,

renalty for Extortion.

Bigamy.

by divorce or otherwise, the person or persons so offending shall be deemed guilty of bigamy, and upon conviction shall be fined in any sum not exceeding one thousand dollars; shall be imprisoned for any length of time not exceeding six months; and if a male, shall be thereafter incapable of holding any office in this state.

Sec. 39. If any person or persons shall erect

any public nuisance, either to the injury of all or part of the citizens of this state, the person

sum not exceeding one hundred dollars; and

if any such nuisance shall be continued by any

person, every such person so offending shall be punished in the same manner as if he had

erected such nuisance; and moreover the said

nuisances shall, by order of the Circuit Court,

be removed by the sheriff of the proper coun-

ty, and if necessary he may summon the pos-

se comitatus to his aid.

renalty.

Penalty for e- or persons so offending shall be fined in any recting nuisance.

How remov-

ed.

Gaming contracts void.

SEC. 40. All promises, agreements, notes, bills, bonds, contracts, mortgages, or other securities whatsoever, made or entered into after the taking effect of this act, when the whole or any part of the consideration of such promise, agreement, conveyance or security, shall be for money or other valuable thing whatsoever, won, laid or betted at cards, dice tables, tennis balls or other game or games whatsoever, or at any horse race or cock-fighting, or any other sports or pastime, or on any wager whatever, or for the reimbursing or repaying any money lent or advanced at the time of such play, bet or wager, so to be betted or wagered, shall be utterly void, frustrate and of no effect, to all intents and purposes whatso-

Bow and when money won at gaming may be recovered back.

Sec. 41. That if any person or persons whatsoever, at any time by playing at any game or games whatsoever, or betting on the hands or sides of such as do play at any game or games, shall lose to any one or more per-

sons so playing or betting, any sum of money or any valuable thing, and shall pay or deliver the same, or any part thereof, the person or persons so losing and paying or delivering the same, shall be at liberty, within six months next f llowing, to sue for and recover the money or other valuable thing so lost and paid or delivered, or any part thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any court or before any justice of the peace in this state having jurisdiction thereof; in which action it shall be sufficient for the plaintiff to alledge that the defendant is indebted to the plaintiff, or received for the plaintiff's use the money so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him according to the form of this act, without setting forth the special matter; and in case the party so losing such money or other thing aforesaid, shall not within the time aforesaid, bona fide without covin or collusion, sue and with effect, prosecute for the money or other thing so lost and paid or delivered, it shall and may be lawful to and for any other person or persons, by any such action or suit as aforesaid, to sue for and recover the same with costs of suit, against any such winner or winners, for the benefit of the family or next of kin to the person or perso as losing the same, and in case there shall be no such family or kindred, for the benefit of county seminaries.

SEC. 42 Every person by virtue of this act, who shall or may be liable to be sued for money or other things so won as aforesaid, shall Winner to be compelled to answer upon oath, such bill answer on or bills in chancery, prefered against him or them for discovering the money or thing so won at play aforesaid: Provided however, On repayupon discovery and repayment of the money or ment exemps things, so to be discovered and repayed as a. foresaid, the person or persons discovering and

from further

repaying the same with costs, shall be acquite ted, indemnified and discharged from any further or other forfeiture, punishment or penalty which he or they may have incurred by playing for or winning such money or other

things so discovered and repaid.

SEC. 43. And to prevent gaming at ordinaries and other public places, which must be often attended with quarrels. disputes and controversies, to the impoverishment of many people and their families, and the ruin of the health and corruption of the manners of youth, who upon such occasions often fall in company with lewd, idle and dissolute persons, who use this way of maintamance: Be it enacted, that if any person or persons shall at any time play in any ordinary, tavern or race field, or in any booth, arbor or out house connected with any tavern, ordinary, out-house, booth, race field, or at any other public place, at any game or games whatsoever, except games at athletic exercise, or shall bet on the hands or sides of such as do play as aforesaid, every person or persons, upon conviction thereof, shall forfeit and pay a sum not exceeding seventy and not less than ten dollars, and shall be bound to their good behaviour with sufficient security, in the sum of seventy dollars for the term of twelve months, and if any person or persons shall give such security and afterwards, within that time, shall play or bet for any money or other valuable thing whatever, such playing or betting shall be deemed a breach of good behaviour, and forfeiture of the recognizance given for the same.

Sec. 44. If any person, by playing or betting at any game or wager whatsoever, at any time shall lose or win to or from another, any sum of money or other article of value, the loser and winner shall each, on conviction thereof, be fined in double the sum won or lost.

SEC. 45. If any person or, persons shall at any time or times, by fraud, shift, cozenage, circumvention, deceit or evil practice whatsoever, in playing at or with cards, dice or other Penalty for game or games, in or by bearing a part or share in the stakes or wager, or adventures in or by betting on the hands or sides of such as do or shall play, win, obtain or acquire to them elves any sum or sums of money or other valuable thing or things whatsoever, every person so winning by such ill practice, and being there. of convicted upon indictment, shall be fined in not less than five dollars, nor more than one hundred dollars, and be bound to his or her good behaviour in any sum, and with such security as the court may deem reasonable, for

one year.

SEC. 46. All and every keeper or keepers, exhibitor or exhibitors of either of the gaming tables commonly called A B C, or E O tables, Keepers of billiard tables or fare bank, or any other ga. A B C. E O. ming table of like or same kind, under any de. or billiard tanomination whatsoever, for the purpose of a penalty. winning or making money directly or indi rectly, for the benefit of any person or persons, shall on conviction thereof, he fined in any sum not less than fifty nor more than two hundred dollars for every such offence, and shall moreover find security for his or their good behaviour for the term of one year, in the sum of To give. refive hundred dollars, and if he, she or they shall afterwards, within that time, keep or exhibit either of the said gaming tables or banks, or other gaming tables or banks, under any denomination whatsoever, or shall play at any game or games prohibited by this act, such keeping, exhibiting or playing shall be deemed a breach of good behaviour, and a forfeiture of the recognizance given for the same.

SEC. 47. If any keeper of a tavern, ordinary or other resort, shall suffer any game or Pensity on tagames, prohibited by this act, to be played at for permiting or within such tavern, ordinary or other house gaming in or public resort, or at any out house appendant their houses, thereto, every such keeper or keepers shall,

genalty for gaming at a tavern or other public place.

Penalty for gaming.

on conviction thereof, forfeit and pay a sum not less than fifty nor more than two hundred dollars, and if any licenced tavern keeper shall be convicted of suffering such gaming in his or her house, he or she, in addition to the penalty hereby imposed, shall moreover forfeithis or her licence for keeping such tavern, and shall not be re-licenced as a tavern keeper for one year from the date of such conviction.

SEC. 48. It shall not be lawful from and after this act shall take effect, for any person or persons to bring or cause to be brought within this state, any playing cards as merchandize, on pain of forfeiting for every pack or deck of cards so brought in for merchandize or other purposes, a sum not exceeding three dollars, to be recovered before any justice of the peace, and appropriated according to law.

Sec. 49. If any person shall unlawfully and forcibly have carnal knowledge of any woman or woman child, against the will of such woman or woman child, the person so offending, his aiders, abetters and counsellers, upon conviction, shall suffer death. In all prosecutions for this offence, evidence of penetration shall be indispensably requisite to a conviction.

SEC. 50. Any person committing sodomy or the infamous crime against nature, with mankind or beast shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, be imprisoned any time not exceeding five years, and be whipped not exceeding one hundred stripes on his bare back, and rendered infamous and incapable of giving evidence.

Sec. 51. If any person shall assault another, the person so offending shall, upon conviction thereof, be fined in any sum not exceeding three dollars.

SEC. 52. If any person or persons shall in a rude, insolent, angry or unlawful manner, touch, strike, beat or wound any other person or persons, the person or persons so offending

upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, to Punishment. which may be added imprisonment for any term of time not exceeding six months; due regard being had to the circumstances of agg avairon attending the said assault and bat-

Sec. 53. If any person or persons shall forcibly steal any man, woman or child, from this Penalty for state, and carry them to any other country, the man-stealing. person or persons so offending shall be fined in any sum not exceeding five thousand dollars nor less than one thousand dollars, and be imprisoned for any term of time not exceeding six

SEC. 54. If any person or persons shall Arson. Penmaliciously and wilfully burn the dwelling alty therefore house, out house, barn or stable, boat or vessel, of any other person or persons, the person or persons so offending, shall on conviction, be fined in anysum not exceeding twenty thousand dollars, and be whipped not exceeding one hundred stripes.

Sec. 55. If any person or persons shall take Penalty for upon himself or themselves, to exercise and officiate in any office or place of authority in this state, without being thereto legally anthorized, the person or persons so offending ing shall upon conviction, be fined in anysum not exceeding five hundred dollars.

SEC. 56. All bonds, bills, deeds of sale, g fts or grants, or other conveyances or obli. Fraudulent gations whatever, made with an intent to deceive or defeat others, or to defeat any creditor or creditors of any just demand, shall be null and void, and the person or persons so offending, upon conviction, shall be fined in a Penalty on ny som not exceeding one hundred dollars, the parties to and pay double damages to the party injur- the same. ed.

SEC. 57. If any person or persons shall fe- Penalty for Ioniously seal, take and carry or lead or drive horse-stealaway any horse, mare, gelding, mule, filley ing.

intrusion into

deeds and ob. ligationsvoid-

Penalty for bringing cards into this state.

Punishment.

Sodomy.

Punishment.

Assault.

Battery.

colt or ass, from another, he, she or they so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and be imprisoned any term of time not exceeding six months, and be whipped not exceeding one hundred stripes; and upon a second conviction of either of the aforesaid offences, the person so offending shall suffer twofold punishment.

Penalty for stealing or markinghogs or altering their mark.

SEC. 58. Any person or persons who shall steal any hog, shoat or pig. or mark, or alter the mark, of any hog, shoat or pig, with an intention of stealing the same, for every such offence, being thereof convicted, shall be fined in any sum not exceeding one hundred dollars each, nor less than two dollars, and morever receive on his or her bare back, any number of stripes not exceeding thirty-nine: Provided, that nothing herein contained shall be so construed as to prevent any person from marking and killing his own unmarked bogs which may be running at large with others in his own mark.

SEC. 59. If any white person shall have sexual intercourse, with any negro within this state, he or she so offending, shall, on conviction by presentment or indictment, if a male be fived in any sum not exceeding one hundred dollars, and if a female, be imprisoned not exceeding ten days; and it shall not hereafter he lawful for any white person to intermarry with

any negro in this state.

SEC. 60. If any person or persons, with intention to defraud, shall alter or deface the mark or brand of any other person or persons horse, mare, gelding, mule, ass, sheep, goat, neat cattle or hog, such person being there if convicted by indictment or presentment, shall, for every horse, mare, ass, sheep, goat, neat cattle or hog, whose brands he or she shall alter or deface, shall forfeit and pay the sum of five hundred dollars, over and above the value of such horse, mare, colt, neat cattle or hog,

to the person whose mark or marks, brand or Prosecution brands, shall have been altered or defaced; when to be provided be prosecutes for the same within six months after discovery of the fact commit-

Mayhems

Sec. 61. If any person shall maim the person of another, by beating out an eye, beating out a tooth, biting or cutting off a finger, arm, or any other limb of the body, or disable the same, or injure any member necessary in fight, or any part of the human frame that renders the person less brave or resolute, the person or persons guilty of either of the aforesaid offences, shall be deemed guilty of mayhem, and on conviction thereof shall be fined in any sum Punishment not exceeding two thousand dollars, and be im. therefor. prisoned not exceeding six months.

SEC. 62 If any person shall, with malice penalty for aforethought, by lying in wait, unlawfully cut cutting out out or disable the tongue, slit or bite the nose, the tongue ear or lip of any person, the person or persons off the ear, so offending, shall, upon conviction thereof, be nose or lips fined in any sum not exceeding one thousand dollars, and shall morever be imprisoned

for any term of time not exceeding six wooths. SEC. 63. If any person shall be guilty of incest, the person or persons so offending shall upon conviction, be publicly whipped not exseeding fifty stripes, and fined in any sum not

exceeding one thousand dollars.

Sec. 64. In all prosecutions, by indictment The general or presentment, the defendant may plead the issue may be general issue, and give the special matter of plead, and justification in evidence: Provided neverthe- special mate less, that the defendant may plead any mat- ter given in ter of justification specially; but when such vidence. plea is put in, the general issue shall likewise be required.

SEC.65. In all cases for presentment or indictment for larceny, robbery or counterfeiting, bed compet within this state, the person or persons from tent witness, whom goods, wares or merchandize, or other thing whatsoever may or shall be stolen, and

Incest

Sexual intercourse between white and black persons pro hibited.

Penalty.

Intermarriage unlawful.

Penalty for altering the marks of domestic animals.

the person or persons whose name or names shall or may be counterfeited or forged to any instrument of writing, of whatsoever nature or kind, shall be deemed and taken, both in law and equity, competent witness or witness.

munishment for having carnal knowyears.

Penalty for

an assault &

battery with

an intention

to commit à

rape, sodomy

or murder.

Sec. 66. If any person fourteen years old ledge with a or upwards, shall have carnal knowledge of female under any woman child un ler the age of ten years, the age of ten either with or without the consent of such infant woman child, the person or persons so of: fending shall suffer death.

> SEC. 67. If any person or persons shall perpetrate an assault and battery, with an intent to commit a rape, sodomy, or murder, the person or persons so offending, upon conviction shall in addition to the punishment inflicted by this act, for simple assault and batter, be whipped not exceeding one hundred nor less

than thirty-nine stripes.

SEC. 68. If any person or persons shall knowingly and designedly, by any false pretence or pretences whatever, obtain from any person or persons any monies, goods. wares or merchandizes, or other effects whatever, with an intent to defraud such person or persons of the same, he, she or they so offending, shall, upon conviction thereof, by verdict or confession of judgment, suffer such fine, punishment and penalties, as in case of larceny is provided to be inflicted.

penalty for obtainingmonies,&c. thro' fraud.

SEC. 69. In all cases of prosecution under In what cas the provisions of this act, where the same is ses the court not expressly provided for by statute, it shall be by presentment or indictment, and in all cases, the jury shall find the amount of the fine and the extent of the punishment and penalties, except in cases where the fine, punishment or penalties are fixed absolutely by statute, or where the party or parties plead guilty, in those cases the court shall assess the amount of the fine, and the extent of the punishment and penalties.

SEC. 70. All fines and forfeitures under the previsions of this act, shall be paid over by Fines, to the proper officers, to the treasurer of the pro- whom paid per county, or to such other person as may over. have been appointed to receive the same, within twenty days after the same shall be collected, for the use of county seminaries.

SEC. 71. It is hereby made the duty of the respective circuit courts, to give in charge this

act to grand jurors.

Sec. 72. In all offences in this act contained, to which the affixed penalty does not exceed three dollars, exclusive jurisdiction is given to justices of the peace in the proper coun-

Sec. 73. All acts and parts of acts heretofore in force, coming within the perview of this act. shall be, and they are hereby repealed; and this act shall take effect and be in force,

from and after its publication.

CHPTER VI.

AN ACT relative to Foreign Attachments. and to regulate proceedings thereon.

APPROVED-Jamiary 14th 1818.

Sec. 1. BE it enacted by the General Assembly of the Stute of Indiana, That the lands and tenements, goods, chattles, rights, credits and effects of every person or persons, non- nonresident's residents of this state, shall and may be at-property liatached for the payment of any just debt or o- ble to attachther demand, by a writ of foreign attachment, ment. to be issued by the clerk of the circuit court, or by any justice of the peace, (provided such justice shall have jurisdiction of the same) as early as may be, and such person or persons shall and may be proceeded against in the same manner as is directed against the lands and tenements, property and estate of absconding 11 13

and in what cases the jury shall determine the fines & pun-

ishments.

Creditor to give bond & make oath.

Proceedings

against joint

obligors and

partners.

debtors; except were otherwise provided for by this act: Provided that every person or persons applying for such writ of attachment, shall before the issuing thereof, enter into bond with security as in cases of domestic attachments, and make oath or affirmation before the person authorised to issue the same, which oath or affirmation shall be filed in the office of the proper clerk or justice of the peace, as the case may require, that he, she or they verily believe that the person or persons against whose estate, or estates the application is made, is or are not at that time resident within this state, and that such person or persons, is or are justly indebted to the said plaintiff, in a certain sum or sums of money, as nearly as may be, to the amount of the debt or other demand of such plaintiff or plaintiffs, as the case may admit, and as he, she or they can lawfully swear or affirm to.

SEC. 2. When two or more persons are jointly indebted as joint obligors, partners or otherwise, then the writ or writs of attachment shall be issued against the seperate and joint estate of such joint debtors, or any of them, either by their proper names, or by or in the name or style of the partnership, or by whatsoever name or names such joint debtors shall be generally reputed, known or distinguished within this state, or against the heirs, executors or administrators of them, or either or any of them. and the lands, tenements, goods, chattles and effects, or any of them shall be liable to be seized and taken for the satisfaction of any just debt or other demand, and may be sold to satisfy the same.

No judgment shall be entered for 13 ment of suit.

SEC. 3. No judgment shall be entered in any attachment hereby directed to be issued, until the expiration of twelve months, during which time the party suing out the attachment months after shall, and he is hereby required to cause notice thereof to be advertised in one of the public newspapers in that or the adjoining county, at least three times successively, which advertisement shall set forth that a foreign attach. Notice of an ment or attachments has been issued, at whose how to be suit and against whose estate or estates the given. same so issued, and that unless the debtor or debtors, whose estate or estates are so seized shall appear by himself or attorney, to give special bail, to answer such suit, that then judgment will be entered against such debtor or debtors by default, and the estate or estates attached, be sold for the satisfaction of the plaintiff's debt : Provided always, that when any goods or chattles of a perishable nature, eroviso for shall be so seized, it shall and may be lawful the sale of for the court, from which such attachment issued, to order the said perishable property so attached, to be sold by the sheriff by auction, who shall detain the proceeds of the sale thereof in his hands, subject to the order of the court, until final judgment and execution :-Provided however, that the same proof shall be required of the justice of such demand before judgment, shall be entered under the provisions of this act, as is usual in other cases in the same courts.

SEC. 4. No creditor or creditors entitled to any share of estates sold under this law, shall receive the same until he, she or they shall enter into bond to the defendant or defendants with good and sufficient security, to be appro- than the atved of by the court, and also to be filed as a- taching credforesaid, in double the sum to be received, with iter shall procondition thereunder written, that the party so receiving shall appear and answer to any suit or suits that shall or may be brought by such defendant or defendants within the space of twelve months then next ensuing, and shall pay unto such defendant or defendants, all such sums of money, which on trial to be had thereon, shall appear to have been received and not justly due, and owing to such creditor or creditors, together with costs of suit.

Sec. 5. That all laws and parts of laws

perisable pro perty.

heretofore in force, relative to foreign attachments, are hereby repealed. This act to be in force from and after its publication.

CHAPTER VII.

AN ACT authorising Domestic Attachments, and to regulate proceedings thereon.

APPROVED-January 14, 1818.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That whenever any person or persons shall so abscond or conceal himself, herself or themselves, so that the usual process of law cannot be served upon him, her or them, it shall and may be lawful for any creditor or creditors of such person or persons, who shall so abscond or conceal himself, herself or themselves, to appear before any clerk of the circuit court or justice of the peace, and make oath to the facts or circumtachment vs. stances in the following form, (to wit:) A B, of the county aforesaid, solemnly swears or affirms, (as the case may be) that C D, late of said county, is justly indebted to him, the said A B, in the sum of ____by (here state the mature of the debt or contract) and the said C D so absconds or conceals himself, herself or themselves (as the case may be) so that the ordinary process of law cannot be served upon him, her or them, as the case may be. Whereupon it shall be lawful for such person, before whom such affidavit, oath or affirmation shall have been taken, to issue his writ of domestic attachment under his hand and seal of office, subject to such regulations and mode of proceeding as is herein after prescribed.

SEC. 2. Whenever such oath or affirmation shall have been taken before any clerk of the circuit court, he shall proceed to issue a writ of attachment against the goods and chattels,

land and tenements, of the defendant named Clerk shall In such affidavit, directed to the sheriff of the issue said county, commanding him to make service and wit not only return of the same within twenty days, on the but vs. lands. return of which writ the clerk shall docket the same for trial at the next term ensuing the service of the same : Provided, always, that the clerk issuing such writ shall, on the service and return of the same, notify the defen. Notice of pen dant or defendants named in such writ of the dency of pendency of the same, by publishing the notice four weeks successively, in some newspaper of the county in which the writ issues, or by affixing such notice at three of the most public places in such county, one of which shall be at the place where courts are holden in and for such county.

Sec. 3. Whenever the time specified in this act for notifying the defendant or defendants named in such writ to appear and plead to the same, shall have transpired according to the intent and meaning of the second section of this act, it shall be the duty of such clerk to note the same on the docket of the court, which note or entry shall continue such cause to that term axt ensuing the time specified in this act for notifying such absent or absconding defendant or defendants.

SEC. 4. When due notice shall have been given of the pendency of this writ, it shall and when taken. may be lawful for the plaintiff or his attorney, to proceed to take judgment thereon, and execution shall issue thereon as in other cases.

SEC. 5. Each and every justice of the peace, is hereby authorised and required to issue a writ of attachment, on the oath or affirmation of the creditor of such absconding debtor as is herein set forth; and such attachment shall issue under the hand and seal of the justice issuing the same, directed to any constable of the proper county, requiring him to execute the same by levying on the goods and chattels, rights and credits, monies and effects, that may

When docketed for trial.

writ, when &

Continuance,

Judgment,

Attachment, issued by A 2;

Clerk of C. C or J. P. to assue on oath a writof domestic atdebtor absconding or concealing himself.

he found within his jurisdiction, and make res turn thereof within cwenty days.

Inventory to be taken by two freeholders.

Sec. 6. The constable executing such writ of attachment shall take to his assistance one constable and or more credible person or persons, who shall be freeholders, and on the discovery of property, shall declare, in the presence of such person or persons, that by virtue of the writ of attachment to him directed, he attaches the goods and chattels, rights, credits, monies and effects of the defendant or defendants named in such writ, at the suit of the plaintiff or plaintiffs named in such writ, and the constable or officer serving such writ shall, with the assistance of such person or persons, proceed to take an inventory of the property so attached, which shall be signed by such officer and person or persons assisting him, and returned with such writ to the person issuing the same, together with the time and manner of serving the same, and subscribe his name thereto, and such writ when served, according to the provisions of this act, shall bind the property from the time of the service of such writ

Sec. 7. Such writ being returned executed the justice issuing the same shall proceed to Notice of the advertise the service of such writ and pendency of the suit thereon, in the same place or places as is prescribed in the second section of this act, once at least, within twenty days be-

fore rendering judgment thereon.

Sec. 8. The constable and sheriffs shall be accountable for the property attached by them respectively, or the appraised value thereof: Provided, however, that if such property, or any part thereof, shall be lost or destroyed by unavoidable accident, the court before whom such writ shall be returned, on sufficient proof being made, shall remit the value thereof to such officer.

countable for the loss of property.

pendency of

Sec. 9. Any person or persons, other than Right of prothe defendant, claiming property attached by virtue of this writ, and issued under the authority of this act, shall notify such officer of his, her or their claim, who shall, previous to any further proceeding on such writ, summon a jury of twelve reputable freeholders, who shall, after being duly sworn by such officer, who is hereby authorized to administer the oath required, proceed to examine the claim made by such person or persons; and if the right of property be found in such claimant or claimants, the officer shall forthwith release from his custody or keeping, such property, When the and the plaintiff in such suit shall pay the costs plaintiff shall accruing from the trial of such right of prop- pay costs. erty. But in case the right of property be found in the defendant or defendants in such writ of attachment, then such claimant or When the claimants shall pay the costs incurred by the claimant, trial of the right of such property; and it shall be the duty of such justice, in the one case, or the circuit court in the other, to tax such costs: Provided, that in all cases the party thinking himself or herself aggrieved. shall have the right of appeal from the verdict of such jury; and also, when the writ of attachment shall have been issued by a justice of the peace; subject, however, in the latter case to the law regulating appeals from the judgment or proceedings had before justices of the peace.

SEC. 10. Be it further enacted, That whenever any creditor or his agent, or attorney in his or her behalf, shall make oath or affirmatiou before the clerk or justice issuing this writ garnishee. of attachment, that he has good reason to believe that any person or persons (naming such person or persons) have property of any description, in his, her or their possession, belonging to the defendant in attachment, and if the officer serving such writ of attachment cannot come at the property of the defendant in the possession of such person or persons, such officer is hereby authorised, and it is hereby made his duty, to summon such person or per-

Appeal.

When a person may be summoned ag

Officer ac-

perty, how

tricd.

sons as a garnishee, by leaving with him, her or them, at his, her or their usual place of residence, a copy of such writ of attachment, also a copy of the affidavit, together with a written notice to such garnishee, to appear (if before a justice of the peace) within five days before such justice, or (if before the circuit court) at the term of the court next ensuing the service of such writ of attachment, and there to answer under oath or affirmation all questions that shall be put to him, her or them, touching the rights, property and credits of the defendant or defendants, in his, her or their hands, or within his, her or their knowledge, and from the day of such service, such garnishee shall stand and be held accountable to the plaintiff or plaintiffs in attachment, for the amount of the money, property and credits in his, her or their hands, or due and owing from him, her or them, to the defendant or defendants in attachment

Suit continuued vs. garnishee until determined vs. principal.

costs.

Sec. 11. The suit instituted against such garnishee shall be continued, without any forther proceedings therein, until the action against the defendant in attachment be determined, and if on trial of such action nothing shall be found due from the defendant to the plaintiff, then the garnishee shall recover costs against the plaintiff, although such garnishee may be indebted to the defendant in attachment, or have money or effects of such When plain- defendant, in his, her or their possession; and tiff shall pay if in such suit so instituted against the garnishee the plaintiff shall be non-suited, the cause discontinued, or judgment be had against him or her, then the garnishee shall recover his costs; and if such plaintiff shall recover judgment against the defendant in attachment, and the garnishee shall deliver up to the sheriff or constable (as the case may be) before judgment had against him or her, or shall jupdace an inventory of all the goods and

chattels and other effects, in his, or her pos. When garsession, and shall also payto such officer all mo- nishee. nies due from him or her to the said defendant, then the costs which shall have accrued on such suit against the garnishee shall be paid out of the proceeds of the property attached and belonging to the defendant; but if he shall not appear, or if appearing shall refuse truly to confess the matter alledged, and the plaintiff When defenon trial shall recover judgment, such garnishee dant. shall pay the costs: Provided, however, that no garnishee in any case shall be compelled to pay monies or perform any contract to or for such plaintiff in attachment, in any other way or manner, or at any other time than he would be lawfully obliged to do to or for the defendant in attachment.

Sec. 12. If the plaintiff or plaintiffs, his, her or their agent or attorney, will make oath or affirmation before the clerk or justice issu- Garnishee ing this writ, that he, she or they is or are a- may be held fraid that said garnishee will abscond before to bail. judgment can be had, and that he, she or they verily believe such garnishee hath monies, goods, chattels or effects, in his or her possession, belonging to (or is indebted to) the said defendant, it shall be lawful for the clerk to issue a warrant against such garnishee, and hold him to bail thereon as in other civil cases; and if the proceedings are had on this writ before a justice of the peace, such justice shall issue his warrant against such garnishee and hold him to bail thereon, as in other civil cases.

SFC. 13. Upon the trial of this writ of attachment in the circuit court in the one case, or before a justice of the peace in the other, if Judgment, the plaintiff or plaintiffs, or any other creditor howrendered or creditors, shall make sufficient proof of the when the debts due him, her or them, from such defend. plaintiff ant, and also of the goods, chattels, lands and his case. tenements, rights and credits, monies and effects, in the hands or possession of the garnishee, such court or justice of the peace, (as

the case may be) shall proceed to give judgment thereon in favor of the plaintiff or plaintiffs, creditor or creditors, either against the garnishee or the effects of the defendant, as the case may require: Provided always, that such execution shall not be levied on the property of such defendant in the hands of such garnishee in violation of the original contract, duty or obligation, due from such garnishee to the defendant in attachment.

When plain tiff fails to prove his demand he shall pay costs.

Sec. 14. Whenever the plaintiff in this writ shall fail in proving his or her demand, against the defendant, or in proving the property or effects claimed or stated to be in the hands of the garaishee, he or she shall pay the costs, and judgment shall be entered up therefor, and execution shall issue for the same.

If the sum exceed his jurisdiction, i. p. to certify proteeding to C. C.

Sec. 15. If the sum, proved by any one plaintiff or creditor, shall be greater than is cognizable by a justice of the peace, such justice shall forthwith certify his proceedings to the next circuit court to be holden in said county, together with the writ and constable's return, and said court shall proceed therein as if the writ of attachment had issued from said court.

Sec. 16. Whenever this writ shall be re-

just credior's demand.

turned before the circuit court, it shall be the duty of such court to examine into and adjust Courts to ad- all accounts and demands of the plaintiff, or any creditor or creditors of the defendant in attachment, upon due proof being made to such court, and if it appears that there is sufficient property for the payment of such defendant's debts and costs, it shall be lawful for such court to appoint a commissioner to pay over, under the direction of the court, to the respective creditors of such defendant; &in case there shall not be found sufficient property as shall satisfy such claims as shall be allowed by the court, then the costs shall be first paid, and the remaining sum or sums divided among such

To appoint commissioners.

creditor or claimants, in proportion to their respective claims; and the same power that is property to here given to the circuit courts shall be ex- ed among tended to justices of the peace: and in all creditors. cases arising under this act, reasonable compensation shall be allowed the officer, jury and appraisers, to be adjudged by the court before whom such proceedings shall be had.

Sec. 17. The plaintiff in any writ of attachment, shall in no wise be permitted to dis- plaintiff shall continue the same after any other creditor has not discontinapplied and filed his or her claim before the ue, court or authority issuing such writ of attachment, without the consent or satisfaction being made to such creditor.

Sec. 18. In all cases where monies and effects cannot be found to satisfy the legal costs of such attachment, then such costs shall be paid to the plaintiff and creditors, in proportion to their several demands, adjusted as aforesaid.

Sec. 19. All judgments rendered under Appeals this act by any justice of the peace may be taken up by appeal to the circuit court, as in other cases.

Sec. 20. Stay of execution on judgments under this act, shall be subject to the same law Stay of exeas is provided for in other cases, and the pro- cution. perty attached shall be released to such defendant, as in other cases.

Sec. 21. When goods shall be attached in the hands of a consignee, such consignee shall lean. have a lean on such goods, for any debt due to him or her from the consignor in preference to the plaintiff or any other creditor.

Sec, 22. All writs of attachment, issued by the circuit court, against any absconding Writs of atdebtor or debtors, shall be a supersedeas to at- tachment istachments issued by a justice of the peace, un- sud by c. c. determined at the time of serving said writ, a supersedeand it shall and may be lawful for the sheriff as to those or his deputy or other officer, to take into his possession the property attached by the con-

be apportion-

issued by J.R.

stable, as fully and to all intents and purposes as if the attachment issued by the justice had not been served; but such creditors as are claimants before the justice shall not be postponed by such supersedeas, but shall be entitled to their several debts, with the costs that shall have accrued before such justice, as well as in the circuit court, in proportion to the creditors claiming by virtue of such supersedeas: Provided, that no constable shall be accountable for any goods by him attached, after the same shall have been taken by the sheriff: provided also, that on the return of an attachment endorsed, no goods or effects whereon to levy, or if it shall appear that there is not sufficient to satisfy such plaintiff or creditor's claim or demand, the justice issuing such writ of attachment shall, on application of the plaintiff or creditor, issue an attachment against the lands and tenements of the defendant or defendants, and the constable shall levy the said writ of attachment in the same manner that sheriffs are directed to do, and on the return of such writ the justice shall forthwith certify his proceedings, together with the constable's return, to the next circuit court to be holden in and for said county, and said court shall proceed in the same manner as if the writ of attachment had originally issued therefrom.

SEC. 23. In all cases arising under this act, where the defendant shall appear on the day of trial, he shall have the same previlege in making his defence as if such suit had been commenced by summons or capias, and when the sum in controversy shall exceed twenty dollars, such trial shall be by jury as in other cases.

Plaintiff to give bond.

Constable to

deliver prop-

erty over to

sheriff.

SEC. 24. No writ of domestic attachment shall issue by any clerk of the circuit court, under this act, until the party applying for the same shall have filed his bond with security in the office of the clerk of the court issuing such

writ; the penal part of such bond shall be double the amount of the original demand; the aufficiency of which bond and security shall be determined by the clerk issuing such writ, and such justice as shall issue this writ, shall and is hereby authorised to judge and determine the sufficiency of such bond, in all cases where he shall act under the authority herein given, and in no case shall such justice issue this writ of attachment until such bond and security is filed; always provided that such bond be made payable to the defendant. No writ proviso when of attachment shall issue against any person or the debtor's persons by virtue of this act, when the family family reof such person shall be and remain settled on fide settled the land belonging to such person; povided that on his lands such persons absence be not corcealed from his, her or their creditors; and provided, that such person shall not be secretly removing to evade the demand or debt of his, her or their creditor or creditors.

SEC. 25. Each and every person or persons who may think himself, herself or themselves aggrieved by process against him, her or them had, under the authority of this act, shall be When action entitled to his, her or their action on the bond may be had that shall be filed by the plaintiff or creditor, bond. or such person as shall sue out such writ of attachment against him, her or them, and if on trial, it shall appear to the satisfaction of a jury, that such proceedings had against the defendant or defendants in attachment, were tortuous and oppressive, then the person aggrieved shall recover damages.

All laws relative to the writ of domestic attachment, heretofore in force in this state, are

hereby repealed,

on plaintiff's

CHAPTER VIII.

AN ACT for granting Writs of Ne- Exeat. and regulating proceedings thereon.

APPROVED-December 30, 1817.

SEC. 1. BE it enacted by the General As: sembly of the State of Indiana, That whenever hereafter, any person or persons is or are about to remove out of this state, without leaving a sufficiency of property for the payment of his, her or their debts, which debts shall not be due at the time, or who have made him or her or themselves liable by contract, for the performance of which contract the time speciwhat cases a fied therein has not yet accrued, it shall and writ of ne ex- may be lawful for such creditor, or such person or persons, who is or are to be benefited by the performance of such contract, and lawfully entitled to the same from the adverse party, to appear before such persons as shall be herein after designated, and make oath to the circumstances in the following form, to wit: 1, A B, do solemnly swear or affirm, (as the case may be) that C D, of the county aforesaid, is justly indebted to me in the sum of----or. (as the case may be) by contract, which debt is not yet due, or which contract is not yet to be performed, and that the said A B, verily believes that the said C D is about to leave or remove out of this state without leaving sufficient property for the payment of his, her or their debts, or (as the case may be) without performing his, her or their centract. Then it shall be lawful for the person, before whom such oath or affirmation is made, to issue a writ of ne-exeat, directed to the proper officer, commanding the person or persons so about to leave the state, to appear forthwith before the person issuing said writ, and shew cause why he should not give bail in the nature of special bail, for the payment of his said debt, or for the performance of his said contract.

How and in eat may be obtained.

Creditor's oath.

Debtor to appear forthwith & give special bail:

Sec. 2. The President of each circuit court or either of the as-ociate judges of the respective may is; cive counties, and all justices of the peace shall sue writs of have power by this act, to issue all writs of ne-exeat. me-exeat, subject however to the regulations and provisions contained in this act: Provided however, if the subject matter of such writ shall not come within the jurisdiction of the justice of the peace issuing the same, it shall be made returnable before one of the associate judges of

the proper county. . Sec. 3. No writ of ne-exeat shall issue in any case, until the complainant applying for creditormust such writ, shall have filed his bond with secu- file a bond rity (to be approved by the judge or justice of prior to issuthe peace signing such writ) for the costs that may arise in each suit, and the damages that may accrue in case such complainant shall have procured the issuing of such writ with-

out just cause.

Sec. 4. Any person conceiving himself or herself aggrieved or damnified by such writ of ne-exeat, shall be allowed to bring suit on may be bo't such bond, and if on trial, it shall appear that on said bond. such writ was prayed without just cause, he, she or they shall recover damages, which dam-

ages shall be assessed by a jury...

SEC. 5. Whenever the defendant or defendants in this writ, shall on being brought before the person before whom the same is made returnable, refuse to give ball in the nature of debtor shall special bail, such juage of justice shall com- be commitmit the person or persons thus refusing, to the ted to prison jail of the county; and the person or persons so committed, shall at any time after such commitment, on giving notice to the jailor that he, she or they are ready to give bail according to the provisions of this act, and shall so give bail, (which bail shall be approved by two from, justices of the peace, who shall be summoned by the jailor immediately, or as soon as shall be practicable,) and if such bail be found sufficlent in the opinion of such justices of the

How dischar

peace, then such person or persons to be discharged from the custody of the jailor on pay-

ing the costs of commitment.

Sec. 6. All proceedings had on this writ before the person, before whom the same is made returnable, shall be returned to the next circuit court, justices of the peace excepted, in which last case it shall be lawful for the party aggrieved to appeal to the circuit court, which appeal shall be taken subject to the law regulating appeals from the judgment of justices of the peace.

Appeal.

SEC. 7. All proceedings on this writ, duly returned according to the meaning and intent of the sixth section of this act, shall be proceeded upon by the court before which such Suithow con- proceedings are returned, in the same manner douted in c. c as if an original writ had been issued from the court and returned, but, no execution shall issue on any judgment rendered thereon, until the expiration of the time stated in the original contract for the payment or performance there-

SEC. 8. No person giving bail according to

the requirements of this act, shall be liable for

any costs that may have accrued by proceed-

ings had on this writ: Provided such person

or his bail, shall pay such debt or perform such contract by the time specified in the ori-

When execution may

Proceedings

returned to

C. C.

issue.

When the creditor shall pay costs.

Securities this writ vs. principal.

al contract. SEC. 9. All persons who shall become security for the defendant or defendants in this may sue out writ, shall have leave at any time to secure the principal or principals in such bond in the same manner as in other cases; and every person bound as security for the payment of money or property, or for the fulfilment of any contract not complied with, shall have the same remedy as is provided for creditors in the first section of this act.

SEc. 10. The form of a writ of ne-exect. State of Indiana, } Sct.

The state of Indiana to the sheriff or constable (as the case may be) of said county, greeting:

WHEREAS A B has this day made oath before me, that C D, of said county, is justly indebted to him in the sum of-dollars and Form of the ----cents, on a note of hand or contract, (as writ of ne-exthe case may be) which debt is not yet due, or eat. which contract is not yet to be performed, (as the case may be) and that he is apprehensive the said C D is about to abscond without leaving a sufficiency of property to pay his just debt. You are therefore hereby commanded, that you forthwith take into your custody the body of the said C D, and him convey before me, (or before J L, one of the associate judges of the county aforesaid) (as the case may require) then and there to shew cause, if any he can shew, why he shall not give bail in the nature of special bail, as the law requires. Given under my hand and seal, this -- day W C, j. p. (SEAL.)

Form of the Bond. Know all men by these presents, that we, A B and E F, of the county of --- are held and firmly bound unto C D, of the same county, in the penal sum of ____dollars and ____ Form of cred cents, money of the United States, to the payment of which sum well and truly to be made to the said C D, his heirs, executors, administrators or assigns, we bind ourselves, our heirs, executors and administrators firmly by these presents, sealed with our seals, and dated this -- day of -- 181-.

The condition of the above obligation is, that whereas the above bounden A B, has this day according to law, obtained from W C. justice of the peace for the said county of D. (or judge of the 1), circuit court) (as the case

may be) a certain writ of ne exeat against the above named CD, commanding him the said

CD, forthwith to be brought before W C. justice of the peace for the county aforesaid, (or J L, judge of the circuit court aforesaid) (as the case may require) then and there to give bail in the nature of special bail, for the performance of a certain contract not yet due. for payment of a certain debt not yet due) (as the case may require.) Now if the said A B, shall prosecute his said writ to final judgment. or shall pay and satisfy all damages and costs which may accrue to the said C D, in case his said suit shall fail, then the above bond to be void, else to be and remain in full force and virtue. A B, (SEAL.)

E F. (SEAL.) Sec. 11. All acts or sections of any act. relative to the writ of ne-exeat, in force previous to the passage of this act, shall be, and the same are hereby repealed.

CHAPTER IX.

AN ACT concerning debtors and their securities, and to empower securities to recover damages in a summary way.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, hat when a-Security ex. ny person or persons, who shall hereafter become bound as security or securities, by bond, bill or note, for the payment of money or other property, shall apprehend that his or her principal debtor or debtors, is or are likely to become insolvent or to migrate from this state without previously discharging such bond, bill or note, so that it will become impossible or extremely difficult for such security or securities, after being compelled to pay the money or other property due by such bond, bill or note, to recover the same back from

onerated if creditor fail to sue after notice.

such principal debtor or debtors, it shall and may be lawful for such security or securities, in every such case. provided an action shall have accrued on such bond, bill or note, to require by notice in writing, of his or their creditors, or his or their assignees, forthwith to put the bond, bill or note, by which he she or they may be bound as security or securities as aforesaid, in suit, who shall in a reasonable time, commence an action on such bond, bill or note, and proceed with due diligence, in the ordinary course of law, to recover a judgment for, and by execution to make the amount due by such bond, bill or note; the creditor or creditors so failing to comply with the requisitions of such security or securities, shall thereby forfeit the right which he or they otherwise have to demand and receive of such security or securities, the amount which may be due by such bond, bill or note.

Sec. 2. Any security or securities, or in case of his, her or their death, then his, her or their heirs, executors or administrators may in ecutors, &c. like manner and for the same cause, make such to proceed as requisitions of the executor or administrators, testator, and or assignees or the creditor or creditors of such exonerated security or securities as it is herein before enacted, may be made by a security of his or their creditor or creditors, and in case of failure of the executors or administrators so to proceed, which requisition being duly made, the security or securities, his or their executors or administrators making the same, shalk have the same relief that is herein before provided for a security or securities when his, her, or their creditors shall be guilty of a sim-

ilar failure. SEC. 3. Provided always, that nothing in Exception to this act contained, shall be so construed as to bonds given by guardians affect bonds with collateral conditions, or the and public bonds which may be entered into by guardians, officers &c. executors administrators or public officers.

SEC. 4. And provided also, that the rights

and remedies of any creditor or ereditors, against any principal debtor or debtors shall be in no wise affected by this act, any thing to the contrary or seeming to the contrary notwithstanding.

Proceedings vs. principal when security paid the debt.

SEC. 5. In all cases where judgment hath been or shall be hereafter entered up in any courts of record within this state, against any person or persons, as security or securities, their heirs, executors or administrators, upon any note, bill, bond or obligation, or the amount of such judgment or any part thereof hath been paid or discharged by any security or securities, his her or their heirs, executors or administrators, it shall and may be lawful for such security or securities, his, her or their heirs, executors or administrators to obtain judgment by motion, against such principal obligor or obligors, his, her or their heirs, exeentors or administrators, for the full amount of what shall have been paid, with interest, by the security or securities, his, her or their heirs, executors or administrators, in any court where such judgment may have been entered up against such security or securities, his, her or their heirs, executors or adminis-

his proportion.

Sec. 6. When the principal obligor or obligors have, or shall hereafter become insol-Co-surety to vent, and there have been or shall be two or more securities jointly bound with the said principal obligor or obligors, in any bond, bill note or other obligation, for the payment of money or other things, and judgment hath been or hereafter shall he obtained against one or more of such securities, it shall and may be lawful for the court, before whom such judgment was or hereafter shall be obtained, upon the motion of the party or parties against whom judgment hath been entered up as securities as aforesaid, to grant judgment and award execution against all and every of the obligors and their legal representatives, for their and each

of their respective shares and proportions of the said debt with the damages and costs of the former suit.

SEC. 7. No security or securities, his, her or their heirs, executors or administrators shall Surety shall be suffered to confess judgment, or suffer judg. not confess ment to go by default so as to distress his, her or their principal or principals, if such principal or principals will enter him, her or themselves a defendant or defendants to the suit, and tender to the security or securities, his, her or their heirs, executors or administrators other good and sufficient collateral security, to be approved of by the court before

whom the suit shall be depending.

SEC. 8. In cases where judgment leath been or hereafter shall be entered up, in any of the Proceedings courts of record within this state, against a- of special ny person as appearance of special bail for the bail vs. pring appearance of another, to defend any suit de- cipal. pending in such court, and the amount of such judgment or any part thereof bath been paid or discharged by such bail, his, her or their heirs, executors or administrators, it shall and may be lawful for such bail, his, her or their heirs, executors or administrators, to obtain judgment by motion, against the person or persons for whose appearance they are bound, his, her or their heirs, executors or administrators for the full amount of what has been paid by the said bail, his, her or their heirs, executors or administrators, together with interest and costs, in any court where judgment may have been entered up against such appearance or special bail.

SEC. 9. Provided always, that no judgment shall be obtained by motion, in any of the ca- Notice of mo ses aforesaid, unless the party or parties a- tion 10 days. gainst whom the same is prayed, shall have ten days previous notice thereof.

SEC. 10. This act to be in force from and after its publication.

judgment:

CHPTER X.

AN ACT for the prevention of Frauds and Perjuries.

APPROVED-January 26th 1818.

Estates created by parol and without writing cstates at will.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That all leases estates, interest of freehold, or terms of years, or any uncertain interest of freehold or term of years, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments, made & created by livery & seizin only, or by parol and not put in writing, & signed by the parties so making or creating the same, or their agents thereunto lawfully authorised by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such parol, leases or estates, or any former law or usage to the contrary notwithstanding.

SEC. 2. Except nevertheless, all leases not Exception to exceeding the term of three years from the maleases not exking thereof, whereupon the rent reserved to ceeding 3 the landlord during such term shall amount unto two third parts at the least of the full improved value of the thing demised.

Assignment of leases, &c. to be in writing.

What agree.

ments must

years.

SEC. 3. And moreover, that no leases, estates or interests, either of freehold or of term of years, or any uncertain interest of, in to or out of anymessuagellands, tenements or hereditaments shall at any time be assigned or granted, unless it be by deed or note in writing, signed by the party so assigning or granting the same, or their agents thereunto lawfully authorised by writing, or by act or operation of law.

SEC. 4. No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of be in writing. his own estate; or whereby to charge the defendant, upon any special promise, to answer

for the debt, default or miscarriage of another, person; or to charge any person, upon any agreement, upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them: or upon any agreement that is not to be performed within the space of one year from the making thereof: unless the agreement upon such action shall be brought, or some note or memorandum thereof, shall be in writing, and be signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.

Sec. 5. All devises and bequests of any Iands or tenements, devisable by force of this act, or any other statute of this state, shall be tested by two in writing, and signed by the party so devis- witnesses. ing the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor, by two or more competent witnesses, or else they shall be utterly

void and of non effect.

SEC. 6. And moreover, no devise in writing, of lands, tenements, or any clause there- Revocation of shall at any time be revocable, otherwise to be in writtthan by some other will or codicil in writing, ing, &c. declaring the same, or by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence and by his directions and consent; but all devises and bequests of lands and tenements, shall remain and continue in force until the same be burnt, cancel. led, torn or obliterated, by the testator or his directions, in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of two or more competent witnesses declaring the same; any former law or usage to the contrary notwithstanding.

Sec. 7. All declarations or creations of trust or confidence of any lands, tenements or here-

Creation of trusts to be in writing.

ditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else shall be utterly void and of non-effect.

Exceptions to trust es. tates that arise from construction of law.

Sec. 8. Provided always, that where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result, by the implication or construction of law, or be transfered or extinguished by an act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made; any thing herein before contained to the contrary notwithstanding.

Assignment of trusts to be in writing.

Sec. 9. All grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting or assigning the same, by such last will or devise, or else shall likewise be utterly void and of non-effect.

How the creditor of ces

Sec. 10. It shall and may be lawful for every sheriff or other officer, to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for and upon any judgment, statute or recognizance, hereafter to shall proceed be made or had, to do, make and deliver exeto obtain the cution unto the party in that behalf suing, of estate in trust all such lands, tenements and hereditaments, as any other person or persons be, in any manner or wise, seized or possessed, in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party against whom execution hereafter shall be so sued had heen seized of such lands, tenements or hereditaments of such estate as they be seized of in trust for him at the time of the said execution sued; which lands, tenements or hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or per-

sons, as shall be so seized or possessed, in trust for the person against whom such execution shall be sued; and if any cestur que trust hereafter shall die, leaving in trust in fee simple, to descend to his heir or heirs, they, and in every such case, such trust shall be deemed and taken, and is hereby declared to be assets by descent, and the heir or heirs shall be liable to and chargeable with the obligation of Estate in his ancestors, for and by reason of such assets, as fully and amply as he might or ought to have been if the estate in law had descended to him in possession, in like manner as the trust descended; any law usage or custom to the contrary notwithstanding.

SEC. 11. Provided always, that no heir or may be seizheirs, that shall become chargeable by reason ed on execuof any estate or trust, made assets in his hands after the heir by this law, shall, by reason of any kind of has parted plea or confession of the action, or suffering with the judgment nient dedire, or any other matter, he same. chargeable to pay the condemnation out of his own estate, but execution shall be sued of the whole estate so made assets in his hands by descent, in whose hands seever it shall come after the writ purchased, in the same manner as it is to be at and by the common law, where the heir at law pleading a true plea, judgment is prayed against him thereupon; any thing in the present act to the contrary notwithstand-

SEC. 12. That from henceforth any estate Estates per per auter vie shall be devisable by will in anter vie de. writing, signed by the party so devising the same, or by some other person in his presence, simple, and and by his express directions, attested and assets in the subscribed in the presence of the devisor, by hands of the two or more witnessess; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee simple; and in case there be no special occu-

P 16

pant thereof it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands.

Judgment from the of a lean upon real esestate.

Goods bound

from delivery

of execution.

SEC. 13. Any court of record, judge, or ofsigning there ficer of any court of record within this state, that shall sign any judgments, shall, at the signing of the same, without fee or reward for doing the same, set down the day of the month and year of his so doing upon the record, which he shall sign, and such judgments as against purchasers bona fide for valuable consideration, of lands, tenements or hereditaments, to be charged thereby, shall, in consideration of law, be judgments from such times as they shall be so signed.

SEC. 14. No writ of fieri facias, or other writ of execution, shall bind the property of the goods against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under sheriff, or coroner to be executed; and it shall be the the duty of such sheriff, under sheriff, or coroner, upon the receipt of any such writ, without fee for doing the same, to endorse upon the back thereof, the day of the month and

year, he or they received the same.

SEC. 15. No contract for the sale of any goods, wares and merchandizes, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorised.

Sec. 16. No will in writing, concerning any goods or chattels, or personal estate, shall be repealed, nor any clause, devise or bequest therein be altered or changed by any words, or will by word of mouth only, except the same

Sale of goods voidable, without delivering ear-

Wills of chattels, how it may be reked.

nest or note

in writing.

be in the life of the testator, committed to writing, and after the writing thereof, read unto the testator and allowed by him, and proved to be so done by two witnesses at the least.

All acts and parts of acts coming within the purview of this act shall be and the same are hereby repealed. This act to be in force from and after its publication.

CHAPTER XI.

AN ACT concerning proceedings in ejectment, distress for rent and tenants at will holding over.

APPROVED .- January 27th 1818.

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That when any goods or chattels shall be distrained for any rent, Owner of reserved and due upon any demise, lease or goods discontract, whatsoever, and the tenant or owner plevy in five of the goods so distrained, shall not, with- days after poin five days after such distress taken, and tice. notice thereof with the cause of such taking, left at the dwelling house, or other most notorious place on the premises, charged with the rent distrained for, replevy the same, with sufficient security, to be given to the sheriff according to law, that then, and in such case, after such distress, and notice as aforesaid, and expiration of the said five days, the person destraining, or his agent duly authorized, shall, and may, with the sheriff, under sheriff, or any Otherwise contable in the county, where such distress distress to be shall be taken, (who are hereby required to be appraised. aiding and assisting therein,) cause the goods and chattels so destrained, to be appraised by two reputable freeholders, who shall have and receive for their trouble, the sum of fifty cents per day, and shall first take the follow-

Appraiser's oath.

Sale of distress.

Distress waron oath.

Penalty for rescue of goods distrained.

ing oath or affirmation: "I, A B, will well and truly, according to the best of my understanding, appraise the goods and chattels of C D, distrained on for rent by E F' -which oath or affirmation such sheriff, under sheriff, or constable, is hereby empowered and required to administer: and after such appraisement shall and may, after six days public notice, lawfully sell the goods and chattels so distrained, for the best price that can be got for the same, for and towards satisfaction of the rent, for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hands of the said sheriff, under sheriff, or constable, for the owner's use: Provided, however, that it shall not be lawful for any landlord or landlords, to make distress for rent, by virtue of this act, unless he shall obtain a warrant from some justice of the peace, within the proper township where such distress shall be made, to be issued on complaint upon oath, describing the premises for which such rent shall or may be claimed as due in arrant to issue mar, in what payable, when due, and the amount thereof; and that he is fearful he will lose his rent by attempting to collect it as other debts are collected.

SEC. 2. Upon any pound breach or rescue of goods and chattels destrained for rent, the person or persons aggrieved thereby, shall in a special action on the case, for the wrong thereby sustained, recover treble damages and costs of suit, against the offender or offenders in such pound breach or rescues, or any or elther of them, or against the owner or owners of the goods distrained, in case the same be afterwards found to have come to his or their use or possession.

SEC. 3. That in case any distress and sale shall be made by virtue of this act, for rent pretended to be in arrear and due, when in truth no rent shall appear to be in arrear or

age to the person or persons distraining, or to Penalty for him, her or them in whose name or names, or distressing right such distress shall be taken as aforesaid, none is due. then the owner of such goods and chattels destrained and sold as aforesaid, his, her or their executors or administrators, shall and may by action of trespass on the case, to be brought against the person or persons so distraining, any or either of them, his, her or their executors or administrators, recover double the valne of the goods and chattels so distrained and sold, together with full costs of suit.

SEC. 4. The goods and chattels of any tenant, lying and being in or upon any messuage, lands or tenements which are or shall be leas- the premises ed for life or lives, term of years or otherwise, taken in exetaken by virtue of any execution, shall be lia- cution to pay ble for the payment of all such sum or sums of the rent. money as are or shall be due from such tenant, for rent for the premises, at the term of taking such goods and chattels by virtue of such execution; and the said sheriff shall after sale of the said goods and chattels, pay to the landlord or other person empowered to receive Officer to par the same, such rent so due if so much shall be over money. in his hands, and if not, so much as shall be in his hands, and apply the overplus thereof, if any, towards satisfying the debt and costs in such execution mentioned : Provided always, For 1 year's that the said rent so to be paid to the land- rent only.

lord, shall not exceed one years rent. SEC. 5. In case any lessee or tenant for life or lives, term of years, at will or otherwise, of any messuage, lands or tenements, upon the Tenant clandemise whereof any rents are or shall be removing his served or made payable, shall fraudulently or property how clandestinely convey or carry off from such de- landlord shall mised premises, his goods or chattels. with a proceed. view to prevent the landlord or lessor from distraining the same for arrears of such rent, so reserved as aforeeaid, it shall and may be lawful to and for such lessor or landlord, or any other person or persons by him for that pur-

pose lawfully empowered, within the space of thirty days next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same may be found, as a distress for the said arrears of such rent, and the same to sell or otherwise dispose of in the same manner asif such goods and chattels had actually been distrained by such lessor or landlord, in or upon such demised premises for such arrears of rent; any law, usage or custom to the contrary notwithstanding : Provided nevertheless, that nothing herein contained shall extend, or be deemed or construed to extend to empower such landlord or lessor, to take or seize any such goods or chattels, as a bona fide sale distress for arrears of rent, which shall be bona fide, and for a valuable consideration, sold before such seizure made, to any person or persons not privy to such fraud as aforesaid; anything herein to the contrary notwithstanding.

Lessor may corn, &c.

Proviso for a

To be appraised and sold.

SEC. 6. It shall and may be lawful to and for every lessor or landlord, lessors or landlords or their bailiffs, receivers, or other perdistrain stock son or persons empowered by him, her or them, to take and seize as a distress for arrears of rent, any cattle or stock of their respective tenants, feeding or pasturing upon all or any part of the premises demised or holden, and also to take and seize all sorts of corn, grass, hops, roots, pulse or other product whatsoever, which shall be growing on any part of the estate or estates so deemed or holden, as a distress for arrears of rent; and to appraise, sell or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of; and the purchaser of any such corn, grass, hops, roots, pulse or other product, shall have free ingress

and egress to and from the same where grow. Purchaser to ing, to repair the fences from time to time, and have ingress when ripe, to cut, gather, make, cure, lay up and thrash and after to carry the same away, in the same manner as the tenant might legally have done, had such distress never been made.

SEC. 7. Every tenant to whom a declaration in ejectment shall be delivered for any lands, tenements or hereditaments within this Tenant constate, shall forthwith give notice thereof to his cealing decla or her landlord or landlords, or his, her or their bailiffs, receivers, agents or attornies, un- forfeit-two der the penalty of forfeiting the value of two years rent. years rent of the premises so demised or holden in possession of such tenant, to the person of whom he or she holds, to be recovered by action of debt, to be brought in any court where the same shall be cognizable, wherein no essoin, protection or wager of law shall be allowed, nor any more than one imparlance.

Sec. 8. It shall and may be lawful for the court where such ejectment shall be brought, to suffer the landlord or landlords to make him, be admitted her or themselves defendant or defendants by defendant in joining with the tenant or tenants, to whom such ejectment. declaration in ejectment shall be delivered, in case he or they shall appear, but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance, Tepant failbut if the landlord or landlords of any part of ing to appear the lands, tenements or hereditaments for which casual ejectsuch ejectment was brought, shall desire to or. appear by himself or themselves, and consent to enter into the like rule, that by the course of the court, the tenant in possession, in case appear by enhe or she had appeared, ought to have done, tering in rule then the court where such ejectment shall be of lease, &q. brought, shall and may permit such landlords so to do, and order stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

ration in e-

Defendants in replevin may avow generally.

When the plaintiff in re plevin shall pay double costs.

Sheriffto take bond from the plaintiff in re plevin.

May assign the same to avowant.

Sec. 9. It shall and may be lawful for all defendants in replevin or other tenant of the lands and tenements whereon such distress was made, to avow or make conusance generally, that he enjoyed the same under a grant or demise at such a certain rent or service during the time wherein the rent or service distrained for incurred, which rent or service was then, and still remains due, without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors; any law or usage to the contrary notwithstanding. And if the plaintiff or plaintiffs in such action shall become non suit, discontinue his, her or their action, or have a judgment given against him, her or them, the defendant or defendants in such replevin shall recover double custs of suit.

Sec. 10. All sheriffs and other officers having anthority to serve replevins, may and shall in every replevin of a distress for rent, take in their own names from the plaintiff and one reasonable person as security, a bond in double the appraised value of the goods distrained, such value to be ascertained by the oath or affirmation of one or more credible person or persons not interested in the goods or distress. and which oath the person serving such replevin is hereby authorized and required to administer, and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels distrained in case a return be awarded before any deliverance be made of the distress; and such sheriff or other officer as aforesaid, taking any such bond, shall at the request and costs of the avowant or person making conusance, assign such bond to the avowant or person aforesaid, by endorsing the same, and attesting it under his hand and seal, in the presence of two credible witnesses; and if the bond so taken and assigned be forfeited, the avowant or person making conusance may bring an action and re-

lover thereupon in his own name, and the court where such action shall be brought, may by a rule of the same court, give such relief to the parties upon such bond, as may be agreeable to justice and reason, and such rules shall have the nature and effect of a defeazance to such bond.

Sec. 11. Where any person or persons have leased or demised any lands or tenements to any person or persons for a term of Proceedings one or more years, or at will, paying certain vs tenants re rents, and he or they, or his or their assigns fusing to quit shall be desirous upon the determination of the at the end of their term. lease, to have again and repossess his, her or their estate so demised, and for that purpose shall demand and require his or their lessee or tenant to remove from and leave the same. if the lessee or tenant shall refuse to comply there with in three months after such request to him made, it shall and may be lawful to and for such lessor or lessors, bis, her or their heirs and assigns to complain thereof to any two justices of the peace, in the county where Complaint to the demised premises are situated, and upon be made to due proof made before the said justices, that the said lessor or lessors had been quietly and peaceably possessed of the lands and tenements so demanded to be delivered up. that he or they demised the same under certain rents to the tenant in possession or some person or persons under whom such tenant claims, or came into possession, and that the term for which the same was demised is fully ended, then and in such case it shall and may be lawful for the said two justices to whom complaint shall be made as aforesaid, and they are hereby enjoined and required forthwith to issue their warrant, directed to the sheriff of sue their war the county thereby, commanding the sheriff to rant to the summon twelve free holders to appear before sheriff sumthe said justices within four days next after is mons a jury suing such warrant, and also to summen the and the tenlessee or tenant or other person claiming or

coming into possession under the said lessee or tenant, at the same time to appear before them the said justices and free holders, to shew cause, if any he has, why restitution of the possession of the demised premises should not be forthwith made to such lessor or lessors, his or their heirs or assigns; and if upon hearing the parties, or in case the tenant or other person claiming or coming into possession under the said lessee or tenant, neglect to appear after being summoned as aforesaid, it shall appear to the said justices and free holders that the lessor or lessors had been possessed of the lands or tenements in question, that he or they had demised the same for a term of years or at will to the person in possession, or some other under whom he or she claims or come into possession, at a certain yearly or other rent, and that the term is fully ended : that demand had been made of the lessee, or other person in possession as aforesaid, to leave the premises three months before such application to the said justices, then and in every such case it shall and may be lawful for the said two justices, to make a record of such Verdict, dam finding by them the said justices and free holders; and the said free holders shall assess such damages as they think right against the tenant, or other person in possession as aforesaid, for the unjust detention of the demised premises; for which damages and reasonable costs, judgment shall be entered by the said justices, and shall be final and conclusive to the parties; and upon which the said justices shall, and they are hereby enjoined and required to issue their warrants under ther hands and seals, directed to the sheriff of the county, commanding him fortwith to deliver to the lessor or lessors, his or their heirs or assigns, full possession of the demised premises aforesaid, and to levy the costs taxed by the justices, and damages so by the free-holders aforesaid assessed, of the goods and chattels of

ages & cost.

Possession given to les-

the lessee or tenant, or other person in possession as aforesaid; any law, custom or usage to the contrary nothwithstanding. Provided nevertheless, that if the tenant shall al- Proviso, title ledge that the title to the lands and tenements ant. in question, is disputed and claimed by some other person or persons whom he shall name. in virtue of a right or title accrued or happening since the commencement of the lease, so as aforesaid, made to him by descent, deed, or from or under the last will of the lessor, and if thereupon the person so claiming shall forth. with, or upon summons immediately to be issued by the said justices, returnable before them in six days next following, appear and on oath or affirmation, to be by the said justices administered, declare that he verily believes that he is entitled to the premises in dispute, and shall with one or more sufficient se- Claimant to curities, become bound by recognizance in the give bond to sum of two hundred dollars to the lessor or prosecute his lessors, his or their heirs or assigns, to prosecute his claim at the next circuit court, to be held for the county where the lands and tenements shall be; then and in such case, and not otherwise, the said justices shall forbear to give the said indgment : Provided also, that if the said claim shall not be prosecuted accor- When the ding to the true intent and meaning of the said bond shall be recognizance, it shall be forfeited to the use of forfeited and the lessor or landlord, and the justices afore- possession given to lessaid, shall proceed to give judgment as d cause sor. the lands and tenements aforesaid, to be delivered to him in the manner herein before enjoined and directed.

Sec. 12. It shall and may be lawful for any person or persons having any rent in arrear or due upou lease for life or lives, or for Afterlease one or more years, or at will ended and deter- ended, when mined, to distrain for such arrears after the distrain for determination of the said respective leases, in rent in arthe same manner as they might have done, if rears. such lease or leases had not been ended or de-

termined: Provided, that such distress be made during the continuance of such lessors title or interest.

CHAPTER XII.

and the state of

AN ACT to Perpetuate Testimony.

APPROVED-January 10, 1818.

Sec. 1. BE it enacted by the General Asa sembly of the State of Indiana, that whenever any person is apprehensive that a suit may be commenced against him, her or them, or that it may be necessary for him, her or them to commence a suit upon any subject of litiga-& C togrant tion which may hereafter arise, and the witnesses which he, she or they may think necessary, are about to remove out of the jurisdicwitness who tion, or are old and infirm, it shall be lawful for such person or persons, to present a petition in writing, stating the subject in contest or that may arise, to any court of record in this state, and the court shall enter on record, an order for a dedimus to issue for the taking of the deposition, agreeably to the prayer of the petition, in order to perpetuate said testimony, and the said testimony so taken may be received as evidence in any court of record in this state, relative to the part or points stated in the petition; and it shall be the duty of the clerk of the court to certify said petition and evidence, or a copy thereof: Provided the subject is litigated in any court of which he is not clerk.

Sec. 2. It shall be the duty of the person or person taking such deposition or depositions, to give reasonable notice to the opposite party of the time and place of taking such deposition or depositions, by serving him, her or them with a notice in writing, or shall advertise it three times at least, in some news-

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Reasonable not co to be given to the opposite par

paper printed in the county where such pefftion is made, or in such newspaper as shall be published nearest such county, and proof of the due execution of such notice shall be made to the person or persons authorized to take such deposition, and a copy of such notice shall be prefixed to the deposition and certified with the same; which deposition when thus taken, shall be lodged with the clerk of the court where such petition shall have been presented. And for the greater security of said A copy of the petition and deposition, it shall be the duty of notice with the clerk to record the same in a book kept for tion to be de that purpose, for which he shall be allowed posited and tencents for every hundred words; and in case recorded in the original should be lost, then a certified copy the clerk's from said record shall be read as evidence.

This law to take effect from and after its publication.

the deposi-

CHAPTER XIII.

AN ACT authorising the granting of letters testamentary and letters of administration for the settlement of intestate estates, and for other purposes.

APPROVED .- January 29th 1818.

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That the clerks of the Circuit Courts within this state, shall take proofs of last wills and testaments, and grant letters testamentary and letters of administration : Provided however, that the said letters to grant lettestamentary and letters of administration ters testagranted by such clerk, in the vacation may be mentary, &c. repealed by sentence of the Associate Judges of the Circuit Court, at the session or term ravokad by for doing county business, next after the gran- A. J. of C. Cy ting of such letters; and other letters may, by the same judges in open court, be granted to

any person applying therefor, and having legal right thereto; in which cases all acts and proceedings done and made by the former executor or administrator, shall be legal and valid, and such further proceedings may be had and made, in the name or names of the succeeding executor or administrator, as though the original suits or proofs had been commenced in his, her or their name or names.

Clerk to rcord wills &c file papers.

Sec. 2. The said clerks shall record last wills and testaments, and make entries of the granting of letters testamentary and letters of administration, in a book to be kept for that purpose, which shall be a record, and shall receive, put on file, and carefully preserve, all bonds, inventories, accounts and other documents, necessary to be perpetuated in such office.

Bonds, to whom payable.

SEC. 3. All bonds that under, or by authority of this act, are directed to be taken, shall be made payable to the Associate Judges of the proper county.

A. J. may compel guartors, &c. to exhibit inventories.

SEC. 4. The Associate Judges aforesaid of each county in this state, shall have full power to award process, and cause to come bedians, execu. fore them, all and every such person and persons, who, as guardians, trustees, tutors, executors, administrators, or otherwise, are or shall be entrusted with, or in any wise accountable for, any lands, tenements, goods, chattels or estates, belonging or which shall belong, to any orphan or person under age, and cause them to make and exhibit, in a reasonable time, true and perfect inventories and accounts of the said estate.

SEC. 5. When any complaint shall be made to the said judges at their session, that an executrix having minors of her own, or being concerned for others, is married or likely to be espoused to another husband, without securing the minors' portions or estates, or that an executor or other person, having the care and trust of minor's estates, is tikely to prove in-

solvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then, and in every such case, the said court is hereby required to call all and every such executors and trustees, and also such guardians or tutors of orphans or minors as have been formerly appointed. or shall at any time hereafter be appointed, to give security to the orphans or minors, by mortgage or bond, in such sums, and with such securities. as the said court may think reasonable, conditioned for the performance of their respective trusts, and for the true payment and delivery. to and for the use and behoof of such orphans as they are concerned for, or such as shall legally represent them, the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall think fit to order, for the benefit and best advantage of such orphans, as is usual in such cases.

SEC. 6. And any of the said executors, administrators, guardians or trustees, may, by the leave and direction of the said judges, put loaned out on out their minors' money to interest, upon such interest. security as the judges shall allow; and if such security so taken boua fide and without fraud shall happen to prove insolvent, it shall be the minors' loss: But if no person who may be willing to take the said money at interest with such security, can be found by the person so as aforesaid concerned for the minors. nor by any others than the said executors, administrators, guardians or trustees, shall in such cases be responsible for the principal money only, until it can be put out at interest as aforesaid.

Sec. 7. Provided always. that the day of the payment of the money so to be put out at For a term an interest at any one time, shall not exceed not exceed

Minor's mo-

executrix is about to be married, or executor is likely to prove insol-

vent.

Proceedings

in case an

ing twelve months.

twelve months from the date of the obligation or other security taken for the same, and so toties quoties, where and so often as the said money shall be paid in, or come to the hands of the said executors, guardians or trustees.

tors &c. shall not pay interest for money in their hands.

Sec. 8. Provided, also, That no executors. When execu guardians or administrators, shall be hable to pay interest for the surplusage of the decedents estates remaining in their hands or power, and belonging to the minors, where the accounts of their administration are or ought to be settled and adjusted before the said judges.

When A. J. and when minors may choose guardians.

Sec. 9. The said judges shall have full may appoint power and authority to admit orphans or minors, when, and so often as there may be occasion, to make choice of guardians or trustees, and to appoint guardians, next friends or tutors, or such as the said court shall judge two young, or incapable according to the rules of the common law, to make choice themselves. and at the instance and request of the said executors, administrators, guardians or tutors, to order and direct the binding or putting out minors apprentices to trade, husbandry or other employments, as shall be thought fi, and all gurdian and prochem amies who shall be appointed by any of the said courts, shall be allowed and received, without further admittance, to prosecute and defend all actions and suits relating to orphans or minors, as the case may require in any court of this state.

Minora bound to trades.

Guardians to defend &c. suits of minors.

A. J's DOWer in case of contempts.

Sec. 10. If any person or persons being duly summoned to appear before anyof the said judg es, relating to any matter or thing by this law made cognizable, before said judges, ten days before the time appointed for their appearance, shall make default, the said judges in term time, may send their attachments for contempts, and force obedience to their warrants, sentences and orders, concerning any matter or thing

cognizable before them, by fine or imprisons ment of body.

SEC. 11. Provided always, that if any person or persons shall be aggrieved by any definitive sentence or judgment of the said judges, it shall be lawful for them to appeal from such judgment to the Circuit Coart within the same county; which appeal, upon security given as is usual in such cases, shall be granted accordingly.

SEC. 12. If any of the said executors, administrators, guardians or trustees have or shall receive or give discharges for any sums of money, debts, rents, or duties belonging to boding upon any orphan or minor, for whom they were or minors. are interested, it is bereby declared that all such discharges or receipts shall be binding to or upon the orphan or minor, when he or she attains to full age, and shall be effectual in law, to discharge the person or persons who take the same

SEC. 13. When any of the said minors attain to the full age, and the person or persons so as aforesaid interested, and concerned for discharge them, having rendered their accounts to the from his judges in session according to law, and paid ward. the minors their due, then such minor shall acknowledge satisfaction before such judges, but in case any of them refuse so to do, then the said judges shall certify how the said persons concerned have accounted and paid, which shall be a sufficient discharge to the guardians or tutors, and to the trustees, executors and administrators, who shall so account and pay : and thereupon all bonds entered into for payment of such orphans? portions shall be delivered up and cancelled.

Sec. 14. Provided always, that none of the A. J. to have said judges, in session or otherwise, shall respect to rehave power to order or commit, the tuition or guardianship of any orphans or minors, or pointment of bind them apprentices contrary to their will, guardian, &c. to any person or persons, whose religious per-

Appeal to

Executors's receipts &c.

How the guardian shall obtain &

in the ap-

sussions shall be different from what the parents of such orphan or minor professed at the time of their decease, or against the minor's own mind or inclination, so far as he or she has discretion and capacity to express or signify the same, or to persons that are not of good repute, when persons of good credit or of the same persuasion may or can be found.

SEC. 15. Provided also, That the said judges, and all others concerned in the execution of this law, shall have due regard to the direction of last wills, and to the true intent and meaning of the testators in all matters and things, that shall be brought before

them concerning the same.

Sec. 16. All bonds or obligations, as are by this, or any other law of this state. direcuse bonds of ted or required to be given to the said judges, relating to minors or decedents' estates, and all such bonds as by any law are directed to be given, by any judge or other officers or persons in office, for the due execution of his or their respective offices or employments, are hereby declared to be, to and for the use of. and in trust for the person or persons concerned, and the benefit thereof shall be extended. from time to time for the relief and advantage of the party aggrieved, by the misfeasance or nonfeasance of the officers that did, or shall give the same ..

After judgissue before execution.

For whose

all civil offi-

cers are giv-

SEC 17. And when any of the said bonds shall be put in suit, and judgment thereon obment thereon tained, the judgment shall remain in the same scire facias to nature the bonds were, and no execution shall issue thereon before the party aggrieved by writ of scire facias, shall summon the person or persons against whom the said judgment shall be obtained, to appear and shew cause, why execution should not issue upon said judgment, and if the party aggrieved shall prove what damages he sustained, thereupon a verdict be found for him, the Court shall award execution for so much as the jury shall then find, with costs, and no more; and the former judgment shall remain cautionary for the satisfaction of such others as shall legally prove themselves damnified, and recover their damages in manner aforesaid.

Sec. 18. The Clerks of the said Circuit Courts, whose duty it shall be to attend as the Clerk to give Clerk of the said Judges, and all others in copies of whose hands the said bonds shall be deposited or lodged, are hereby required to give any person injured and requesting the same, a true copy of any of the said bonds, the person applying for the same paying thirty seven and a half cents therefor, and to produce the original in court, upon any trial that shall be had for the breach of any of them, if required by such judges; and if the person in whose To produce hands the said bonds shall be lodged or come, them in shall refuse or delay to give copies thereof, and produce the original in court as aforesaid, he or they shall forfeit and pay to the party aggrieved, treble damages, to be recovered a. renalty for gainst the officer who gave such bonds and his securities, by action of debt, bill or plaint, in any court in this state having cognizance thereof, when no essoin, protection or wager of law, or any more than one imparlance shall be allowed.

Sec. 19. The Clerks of the Circuit Courts Administrashall, upon granting letters of administration tors to give of the goods and chattels of persons dying intestate within this state, take sufficient bonds, with two or more securities, respect being had to the value of the estate, in the name of the said associate judges of the said court, with the conditions in manner and form following, mutatis, mutandis-viz:

Sec 20. The condition of this obligation dition thereis such, that if the above named and bound

administrators of all and singu-

lar, the goods, chattels and credits of deceased, do make or cause to be made a true and perfect inventory, of all and sin-

Form of con-

gular, the goods, chattels and credits of the said deceased, which have or shall come to the hands or possession or knowledge of him the said or into the hands of any other person for him, and the same so made do exhibit or cause to be exhibited to the said judges in session of the county of

at or before the day of

next ensuing; and the same goods, chattels and credits of the said deceased, at the time of his death, which at any time hereafter shall come to the hands or possession of the said

or into the hands or possession of any other person or persons for him, do, will and truly administer according to law, and farther do make or cause to be made, a true and just account of his administration, at or before the day of and all the rest and residue of the said goods, chattels, and credits, which shall be found upon the said administrators account, (the same being first examined and allowed of by the Associate Judges of the county, when the said administration shall be granted) and deliver and pay unto such person or persons respectively. as the said judges in the respective county, by their decree or sentence, pursuant to the true intent and meaning of law. shall limit and appoint; and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named, do exhibit the same before the said Associate Judges in term time or session, making request to have it allowed and approved accordingly, if the said within or above bound, being thereunto required, do render and deliver the said letters of administration. approbation of such testament being first had and made in the said court; then this obligation to be void and of non-effect, or else to remain in full force and virtue.

SEC. 21. That all the moveable property of any person or persons dying testate or intestate in this state, shall, unless otherwise di- Moveable rected by the will of such testator, or by a property to rule or order of the said judges, be sold by too unless his, her or their executors or administrators prohibited by by public vendue to the highest bidder, on a A. J. or test credit of at least three months, the purchaser tator. or purchasers giving bond with security to be approved of by the executor or administrator, for the payment of the purchase money at the time mentioned in the conditions of sale, either with or without interest, as expressed in such conditions: Provided however, that the executor or administrator shall give at least ten Ten days nodays previous notice of such sale, by public tice of sale to advertisement set up in the neighbourhood of be given. the decedent's late place of residence: Provided also, that executors or administrators may make it a part of the conditions of such sale, that purchases under three dollars shall be paid down.

SEC. 22. That administrators in settling Administrathe accounts of their administrations shall be tors to accharged with and account for the nett pro- count for the ceeds of such sales, notwithstanding the same amount of may amount to more or less than the apprais-

ed value.

Sec. 23. That no action or suit shall be maintained against any executor or executors, No suit shall administrator or administrators for debts due vs. executor by the testator or intestate at the time of his or adminisdeath, before the expiration of twelve months trator for 12 after the granting of the first letters of admistration or letters testamentary, and if any such action or suit shall be brought, contrary to the provisions of this act, the same shall be dismissed by the court with full costs.

FEC. 24. If any person or persons shall die intestate, being owner of land or tenements within this state, at the time of their death, and leave lawful issue to survive them, but not a sufficient personal estate to pay their just debts and maintian their children, in such case it shall be lawful for the administrator or ad.

When A. J. may order admr. to sell real estate.

ministrators of such deceased. to sell and convev such part or parts of said lands or tenements for paying their just debts, maintainance of their children, and for putting them apprentices, and teaching them to read and write and for improvement of the residue of the estate, if any there be, to their advantage, as the said judges of the county where such estate lies, shall think fit to allow, order and direct from time to time.

Proviso in case of marriage settlements.

be exhibited before an or der of sale ted.

Mansion house to be last sold.

Notice of sale how given.

SEC. 25. Provided always, that no lands or tenements contained in any marriage settlement shall, by virtue of this law, be sold or disposed of contrary to the form and effect of such settlement, nor shall any such judges allow or order any intestates lands or tenements to be sold, bafore the administrators requesting the same, do exhibit a true and perfect in-Inventory to ventory and conscionable appraisement of the intestates personal estate whatsoever, as also, a just and true account, upon his, or her solwill be gran- emn oath or affirmation, of all the intestates debts which shall have come to his or her knowledge, and if thereupon, it shall appear to the judges that the intestates personal estate will not be sufficient to pay the debts and maintain the children until the oldest of them attains the age of twenty-one years, or to put them out to be apprentices and teach them to read and write, then & in every such case, and not otherwise, the court shall allow such administrator to make public sale of so much of the said lands belonging to any minor, as the judges upon the best computation they can make of the value thereof, shall judge necessary for the purposes aforesaid, reserving the mansion-house and most profitable part of the estate until the last; but before any such sale be made, the court shall order so many writings to be made by the clerk as the said judges shall think fit, to signify and give notice of such sales and of the day, time and place where the same will be, and what lands are to

be sold, and where they lie; which notice shall be handed to the sheriff or constable in order to be fixed in the most public places of the county, city or town, at least twenty days before such sale, and the sheriff or constables are hereby required to make publication accordingly, and the administrator who makes such sale, shall bring his or her proceedings Admr. to retherein to the next session holden by the said port at the judges after the sale so made as aforesaid, and if it shall happen that any lands be sold by virtue of this law, for more than the judges computation of the value thereof, then the administrator shall be accountable, as by this law is required for intestates personal estates.

Sec. 26. When any person or persons shall depart this life, having in his life time entered any tract or parcel of land in any of may order the land offices of the United States, in this land entered state, and shall not have paid the several in- and not paid stalments due, or that may become due on said for to be sold. entry, and shall not leave personal assets sufficient to pay the same, or leaving enough, but in such situation that they cannot be applied in time to such payments, so as to prevent a forfeiture of such land so entered, it shall be lawful for the executors or administrators of such deceased, under the direction and order of the associate judges of the circuit court of the proper county, to sell at public sale for the best price that can be had, the tract or parcel of land so entered, and the person purchasing shall have the same interest in said land as such deceased had, and no more: and such executors or administrators shall convey the land so sold, to the vender by assignment on Conveyance the back of the certificate, or in any method of how made. conveyance which now is or hereafter may be pointed out by the laws of the United States. and all monies proceeding from such sale, shall be considered in the same light as other personal assets are, and disposed of accordingly by such executors and administrators . Pra.

(145)

vided, that the same rules and regulations be had, as are had on other lands sold by executors and administrators.

Sec 27 And every such bond or bonds are hereby declared to be good to all intents and purp ses, and are pleadable in any court of justice having cognizance thereof; and also, the said judges in the respective counties shall and may, and are hereby enabled to proceed and call such administrators to account for, and touching the goods of any person dying intestate, and upon hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear, after all debts, funeral and just expences of every sort first allowed and deducted according to the laws of this state, and to the rules and limitations hereafter set down, and the same distributions to declare and settle, and to compel such administrators to observe and pay the same, by the due course of the laws of this state, saving to every one supposing him or themselves aggrieved, their right of appeal to the circuit court in and for the respective county.

Children of

intestate to

share the es-

tate equally.

Admrs. to ac-

count for at

fects in their

hands.

Sec. 28. Provided always, that in case any child who shall have any estate by settlement from the intestate, or shall be advanced by the said intestate in his life time by portion, not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the said estate of such intestate, to be distributed to such child or children as shall have any land by settlement from the intestate or were advanced in the life time of the intestate, as shall make the estate of all the said children to be equal, as nearly as can be estimated; and in case there be no children nor any legal representatives of them, then one moity of the said estate shall be allowed to the wife of the intestate, and the residue of the said estate to be distributed equally to every of the

next of kindred of the intestate, who are in e. If there are qual degree, and those who legally represent no children, them . Provided that there have been some half to them : Provided, that there be no representa- the wife and tives admitted among collaterals after bro- the other to there and sisters children, and in case there the next of be no wife, then all the said estate to be dis- kindred. tributed equally to and among the children; Who admits ted as collatand in case there be no children, then to the erals. next of kin in equal degree of or unto the intestate, or their legal representatives as aforesaid, and in no other manner whatever.

Distribution

Sec. 29. Provided also, and to the end, that a due regard be had to creditors, that no such distribution of the goods of any person dying intestate shall be made, till after one year be fully expired after the intestates death, and to be made af that such and every one to whom any distribu- ration of one tion and share shall be allotted, shall give bond year. with sufficient securities to the said judges, in Bond to reand for the proper county, that if any debt or fund to be debts truly owing by the intestate, shall be af- given. terwards sued for and recovered, or otherwise duly made to appear, that then and in every such case, he or she shall respectively refund and pay back to the administrator. his or her rateable part of that debt or debts. and of the cests of suit and charges of the administrator by reason of such debt. out of the part and share so as aforesaid, allotted to him or her thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as a-

SEC. 30. When hereafter any person dies intestate, leaving no heirs or legal representatives, it shall be the duty of the associate judg- heirs, inteses of the proper county, to cause the adminis- tates propertrator or administrators, to make sale of all- 1y to be dethe decedents estate, both real and personal, posited in the at such times and places as the said judges, may direct, and the money arising from all such sales, together with all other monies which shall otherwise come to the hands of

foresaid.

such administrator or administrators, shall be by such administrator or administrators deposited (within six months thereafter) in the treasury of the proper county, and shall take such treasurers receipt for the same, and produce such receipt to the said associate judges at their next term thereafter; and the money thus deposited shall go to the proper use of the said county, but at any time within twenty years thereafter, any person or persons shall appear and prove to the satisfaction of the said associate judges, that he, she or they are the heir or heirs, or the legal representative or representatives of such deceased person, it shall be the duty of such judges to give such person or persons an order on the county treasurer for all the monies in his hands, belonging to the estate of such decedent, together with three per centum per annum thereon, and it shall be the duty of such county treasurer to pay the same out of any county funds in his hands. SEC. 31. Provided always, that in all cases

Administration with the will annexed.

Letters of administaration void.

A. J. or clk. liable.

Such adm'r. or executor deson tort.

cordingly, as before directed. SEC 32. When any letters of administration shall be granted and no bond with securities given, as the law in that case requires, without bond such letters of administration shall be, and are hereby declared to be void and of none effect; and the clerk or judges of the court that granted the same, shall be ipse facto liable to pay all such damages as shall accrue to any such person or persons by occasion of granting such administration; and the party to whom the same shall be so granted, may be sued as executor in his own wrong, and shall be so taken and deemed in any suit to be brought against him for or by reason of his said administration, or if upon such examination it appears that the said court hath not ta-

where by law administration with the will an-

nexed ought to be granted, the said clerk or

associate judges shall grant administration ac-

ken sufficient sureties, where the administrator may not be of ability to answer or make good the value of what the decedents est te doth or shall amount unto, then the said judges are hereby required and impowered to Proceedings cause all such administrators to give betterse- when adm'rs curity to the said court, by bonds in manner are ruled to and form as the law prescribes, and under security and such penalties, and with such sureties as the refuse. said judges shall approve of, after they have heard the objection of creditors or persons concerned, if any such be made during the setting of the court, and if it appear that any of the said administrators have embezzled, wasted or misapplied, or suffered to be, any part of the decedents estate, or shall neglect or refuse to give bonds with sureties as aforesaid, then and in every such case, the said court shall forthwith, by their sentence, revoke or repeal the letters of administration granted by them, and thereupon, when such occasion happeas, they are hereby required to grant letters of administration to such person or persons, having right thereunto, as will give bonds in manner and form aforesaid, who may have their actions of trover or detinue for such goods or chattles as came to the possession of the former administrators, and shall be detained, wasted, embezzled or misapplied by any of them, and no satisfaction made for the same.

SEC. 33. When any person has died, or may hereafter die intestate, leaving his or her heirs, or any of them infants, or having made a will, shall in said will have authorised his How the obor her executors, or some fit person to make ligee who has obtained deeds of conveyance, and having previous to a bond for a his or her death, executed bonds or other in- deed shall afstrument in writing, binding bim or her to con- ter obligor's vey any tract of land or lot of ground, in such death have a title made to cases the executor or administrators shall ap- him. ply to the associate judges in session, where such land lies, to appoint fit persons as com-

missioners, who shall have power and authority to convey any tract of land or lot of ground to the person entitled to the same, which the decedent bound him or herself, or his or her heirs by any instrument in writing to convey, agreeably to the tenor and effect of the same; and such conveyance so made, shall be as valid and obligatory upon the heirs, as if made by the ancestor in his or her life time: Provided however, nothing in this act shall be so construed, as to prevent the infant representatives of such decedent, from instituting suits to recover such land, or a compensation in damages for the person or persons to whom it shall have been so conveyed, if a fraud shall have been practiced in obtaining the same; Provided always, that the bond or instrument, on which such conveyance is prayed, shall be filed with the records of the said court.

Sec. 34. Whenever it shall appear to the said associate judges in any of the counties in this state, on petition of any guardian or guardians of any minor or minors, being owner or ise guardians owners, proprietor or proprietors of any houses and lots, in any town or village in this state, that the yearly rents, issues and profits beyond all reprisals of the same are not sufficient to keep them in repair, it shall and may be lawful for such court to authorise the said guardian or guardians to sell and dispose of the said house and lot, or honses and lots by public auction to the highest bidder, on giving thirty days previous notice of the time and place of such sale, which shall be on such credit as the judges shall direct, payable with

> SEC. 35. The said guardian or guardians on the sale being made, shall take bond from such purchaser or purchasers with sufficient security, to be approved of by the judges for the payment of such consideration money, who shall thereupon by proper deeds convey to such purchaser or purchasers, his or her heirs,

lawful interest.

When A J. may authorto sell houses and lots.

Guardian to

take purcha-

ser's bond &

make deed.

all the state right, title and interest of such minor or minors of, in and to, the house and lot, or houses and lots; which conveyance so made, shall be as valid and effectual, as if the same had been made by such minor or minors, when of full age.

SEC. 36. The said guardian or guardians Accountable shall account for the consideration money re- for proceeds ceived for such house and lot, or houses and of sale. lots, in the same manner as for the other estate

of such minor or minors.

Sec. 37. All wills in writing, wherein or whereby any lands, tenements or heredita- Written wift ments have been, are, or shall be devised, (be-duly proved, ing proved by two or more credible witnesses good conveyupon their solemn oath or affirmation, or by tates devised. other legal proof in this state, or being proved before such as have or shall have power in any of the United States, or elsewhere, to issue probates of wills, and grant letters of administration, and a copy of such will, with probate thereof annexed or endorsed, being transmitted hither under the public or common seal of the courts or officers where the same have or shall be taken or granted, and recorded or entered in the office of the Clerk of the Circuit Court in this state, for the proper Probates of county,) shall be good and available in law for wills, matter the granting, conveying and assigning, of the copies, good lands or hereditaments thereby given or devis- evidence. ed, as well as of the goods and chattels thereby bequeathed; and the copies of all wills and probates, under the public seals of the courts or officers where the same have been or shall be taken or granted. respectively, other than copies or probates of such wills as shall appear to be annulled, disproved or revoked, shall be judged and decreed, and are hereby declared to be matter of record, and shall be good evidence to prove the gifts or devise thereby made; and all such probates, as well as all letters of administration, granted out of foreign the state, being produced here under the seal courts to

Mave full power in this state.

of the courts or officers granting the same, shalf be as sufficient to enable the executors or administrators, by themselves or attornies, to bring actions in any court within this state, as if the same probate or letters testamentary or administration, were granted here and produced under the seal of the Circuit Court, in any county of this state.

ty aggrieved.

Sec. 38. Provided always, That if any of the wills whereof copies of probates shall be be disproved produced and given in evidence, shall, within within seven seven years after the testator's death, appear years remedy to be disproved or annulled, before any judge or officer having cognizance thereof, or shall appear to be recorded or attested by the testator, either by a letter, will, or codicil in writing, duly proved as aforesaid, then, and in every such case, it shall and may be lawful for the party aggrieved, or his or their heirs, executors or assigns, to have their action for what shall be taken, or detained from them by occasion of such wills, or have their writ or writs of error for reversing the judicial proceedings, (as the case shall require.) any thing herein contained to the contrary notwithstanding .-Provided however, That in all cases where any person or persons shall have made any last will and testament, wherein or whereby any lands, tenements or hereditaments, shall have been devised or attempted to be devised, or shall hereafter make any such will to any person or persons whatsoever, and the said will so made, or which shall or may hereafter be made, shall not have been or shall not be duly proved before the clerk who had, or shall here-Willdevising after have authority to receive the proof of such last will and testament, out of court, and issue probate thereon, and by him recorded or to be recorded, or unless the same shall have been or shall be duly proved in open court, and duly recorded as the act and deed of the said court, who have received, or may hereafter receive such proof and granted such pro-

be proved & recorded within three years from death of testator, other. wise void.

bate, in the same manner and as fully as all other acts of such court are usually recorded. within three years next after the death of such person or persons making such will, if the said will shall have been or shall be so long known to the person or persons interested therein to have been made, then, and in all such cases, the lands, tenements and hereditaments, in such will mentioned or described, shall not pass by the said will, but shall descend to the heirs and legal representatives of such deceased person or persons, in the same manner and to all intents and purposes, either in law or in equity, as if such person or persons had died intestate, and no such will had ever been made or written, according to the law which was, shall or may be in force at the time of such death, saving to the widow her right of dow-

SEC. 39. No nuncupative will shall be good Nuncupative where the estate thereby bequeathed, shall ex- wills, how ceed the value of eighty dollars, that is not proved. proved by two or more witnesses, who were present at the making thereof; nor unless it shall appear that the testator, at the time of pronouncing the same, bid the persons present, or some of them, bear witness, that such was his will or that effect; nor unless such nuncupative will be made in the time of the last sickness of the deceased, and in the house of his or their habitation or dwelling, or where he or they have or hath been resident for the space of ten days or more next before the making of such will, except where such person is surprised or taken sick being from his or her own house or dwelling.

SEC. 40. Where six months have passed Limitation of after the speaking the pretended testamentary of time words no testimony shall be received to prove wherein to any municipative will, except the said testi- prove the mony or the substance thereof was committed to writing within six days after making the anguan limis 21 13, 105 Jane said will.

Widow&c. of deceased to be summoned.

SEC. 41. No letters testamentary or probate of any nuncupative will, shall pass the seal of the Circuit Court in the respective county until fourteen days at least after the death of the testator be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process has first issued out to call in the widow or next of kindred to the deceased, to the end that they may contest the same if they please.

Exception to sailors and soldiers.

Sec. 42. Notwithstanding this law any man or person being at sea, or a soldier in actual military service, may dispose of his moveables, wages and personal estate, as he might have done before the making hereof.

SEC. 43. It shall be the duty of the several courts and clerks of counties within this state. Executors to on taking proofs of last wills and testaments thereon, to require the executor, executrix or executors, to give bond and security, similar in all respects to that which is required by administrators, except the necessary alteration in the terms; and the said bonds so taken shall be of equal force and effect, to all intents and purposes with that which is required of administrators by the provisions of this act.

Letters testamentary void without bond.

SEC. 44. That when any letters testamentary shall be granted, and no bonds with securities given as this law requires such letters testamentary shall be and they are hereby declared void and of non effect. And the clerk or associate judges of the Circuit Court that granted the same, as the case may be, ipse facto liable to pay all such damages as shall accrue to any person or persons, by occasion of granting such letters testamentary; and the person or persons to whom such letters testamentary are so granted may be sued as executor in his, her or their own wrong, and shall be so deemed and taken in any amount brought against him, her or them, for, or by reason of his, her or their executorship.

SEC. 45. If it'shall appear that the said

the said clerk or courts have not taken suffi. When secucient securities, and that the executor, executrix or executors are not of ability to answer J. to cause or make good the value of what the decedent's better to be estate doth or shall amount unto, then the taken. said court are hereby required and authorised to cause such executor, executrix or executors, to give better securities to said court, in the same manner, upon the same principles, and under the same rules and regulations that are provided by this law to cause administrators to give better securities, and in case any executor, executrix or executors, shall neglect or refuse to give bond with better securities as aforesaid, then, and in every such case, the court shall forthwith by their sentence, revoke or repeal the letters testamentary by such clerk or court so granted to such executor, executrix or executors, and thereupon grant letters of administration to such person or persons as shall appear to be best entitled thereto, and will give bond and security, in manner & form aforesaid, who shall have their actions of trover and detinue against such executor, executrix or executors, whose letters testamentary have been so revoked or repealed, for all such goods or chattels as shall have come into their possession by virtue of such letters testamentary so revoked or repealed, and shall be detained, wasted or misapplied, by them or any of them, and for which no satisfaction has been made.

All laws and parts of laws heretofore in force, on the subjects herein contained in this state, are hereby repealed. And this act shall take effect and be in force from and after its publication.

CHAPTER XIV.

AN ACT for the relief of the poor.

APPROVED .- January 24th 1818.

Com. of C. the poor.

Sec. 1. BE it enacted by the General Asto appoint o- sembly of the State of Indiana. I'hat the commissioners of the several counties in this state shall, at their first or second session, in each and every year, nominate and appoint two substantial inhabitants of every township within their respective counties, to be overseers of the poor of such township.

how filled.

Sec. 2. If any overseer shall die or resign Vacancies. before the expiration of his office. two commissioners, on due proof thereof being made before them, shall appoint another in his stead. Every overseer so nominated and appointed shall, before he enters upon the execution of his office, take an oath or affirmation respectively, according to law, which any judge or justice in the counties respectively is hereby authorized and empowered to administer, that he will discharge the duties of overseer of the poor, truly, faithfully and impartially, to the best of his knowledge and ability.

take an oath.

Overseers to

Overseers to farm out the poor.

SEC. 3. It shall be the duty of the overseers of the poor, in each and every township, yearly and every year, to cause all poor persons, who have or shall become a public charge to be farmed out at public vendue or outcry, (to wit,) on the first Monday in May, yearly and every year, at some public place in each township in the several counties of this state respectively, to the person or persons who shall appear to be the lowest bidder or bidders, having given ten days previous notice of such sale, in at least three of the most public places in their respective townships; which notices shall set forth the name and age as near as may be, of each person to be farmed out as aforesaid.

Sec. 4. The overseers of the poor shall Overseers to make a return to the clerk of the county com- make return missioners of the sum or sums of money, for of farming which the poor of their respective townships out to Com'r. were sold, within fifteen days after every such of C. sale shall have been made; which sum shall be paid out of the county treasury, upon the order of the county commissioners, in the same manner as other claims in the county are.

Sec. 5. If any person or persons shall become legally a township charge, after the poor of the township shall have been sold as aforesaid, it shall be the duty of the overseers to proceed in manner aforesaid, to dispose of such person or persons for the remainder of the year, giving the same notice of such farm. ing out; and the expence of such poor shall be paid as is provided in the foregoing section.

Sec. 6. It shall be the duty of the over- Com. of C. seers, on any complaint made to them, or on for neglect on behalf of the poor, to examine into the ground in treatment of such complaint, and if in their opinion the poor have not been sufficiently provided with from the the common necessaries of life, or have been price of in any respect ill treated by the farmers afore- boardings. said, it shall be lawful for the overseers to with hold any part of the compensation aforesaid.

Sec. 7. It shall and may be lawful for the overseers of the poor of the township afore- may bind out said, to put out as apprentices, all such poor poor children children, whose parents are dead, or shall be by the said overseers, found unable to main tain them, males until the age of twenty-one and females until the age of eighteen years.

Sec. 8. It shall be the duty of the over- Paupers to seers of the poor to enter on the poor book of be entered on their respective townships, all poor persons in their townships, who are unable to take care of themselves, and who shall be in their opinion entitled to the benefit of this act, together with the date or time of the entry of such person.

of the terms

of the poor to deduct

Overseers as apprenti-

penulty for refusing to serve as overseer.

Sec. 9. If any person appointed as overseer of the poor of any township shall refuse or neglect to take upon him the said office, he shall forfeitsix dollars to and for the use of the poor.

In case of death or removal of o verseer to whom his books shall be delivered.

Sec. 10. If any overseer shall remove out of his proper township, he shall, before his removal, deliver over to some other overseer of the township or place from which he removes. all his books, papers and other things concerning his office, and upon the death of any overseer, his executors or administrators shall. within fortydays after his decease, deliver over all things concerning his office to some other overseer aforesaid.

Overseers a body corporate.

Sec. 11. The overseers of the poor for the several townships for the time being respectively, shall forever bereafter, in name and in fact, be, and they are hereby declared to be, bodies politic and corporate in law to all intents and purposes, and shall have perpetual succession, and may, by the name of the overseers of the poor of their respective townships, sue and be sued, plead and be impleaded in all courts of judicature, and by that name shall and may purchase, take or receive any lands, tenements or hereditaments, goods, chattels, sum or sums of money, to and for the use of the poor of their respective townships, of the gift, alienation or devise of any person or persons whomsoever, to hold to them the said overseers, and their successors in the said trust, for the use of the said poor forever. .

What shall be deemed a legal settlement.

Sec. 12. If any person who shall come to inhabit in any county or place within this state, shall, for himself and on his own account, execute any public office, being legally placed therein, in the said county or place, during one whole year, or if any person shall be charged with and pay his or her share of the public tax or levy of such county for two years successively, or if any person shall really and bona fide take a lease of amy lands or tenements in said county, or place of the yearly value of twenty five dollars, and shall dwell in or on the same for one whole year and pay the said rent, or shall become seized of any free-hold estate in any lands or tenements in such county or place, and shall dwell in and upon the same for one whole year, such person in any of these cases shall be adjudged and deemed to gain a legal settlement in the same county or place where such person shall so execute an office, or be charged with and pay taxes, take such lease or own any such free-hold estate and dwelling thereon as aforesaid, or being hired or bound shall continue and inhabit in a place for one whole year as aforesaid.

SEC. 13. Every married woman shall be deemed during coverture, and after her husband's death, to be legally settled in the place

where he was last settled.

Sec. 14. Upon any complaint made by the overseers of the poor of the proper county or place, to any justice of the said county, wherein such township or place is situate, it shall and may be lawful to and for any one justice of Removal of the said county respectively, where any person are supposed or persons not a citizen or citizens of such soon to betownship according to the provisions of this come a counact, is or are likely to become chargeable to said county or place where he, she or they shall come to inhabit, by his warrant or order directed to the said overseers, to remove and convey such person or persons to the county, township, place or state where he, she or they was or were last legally settled, unless such person or persons shall give sufficient security. to discharge and indemnify the said county or place, to which he, she or they is or are likely to become chargeable as aforesaid.

Sec. 15. If any person or persons shall think himself or themselves aggrieved by any order or removal made by any of the said justices, such person or persons may appeal to

C. and proceedings thereon in ca wals

Appeal to C. the next circuit court, for the county from whence such poor person hall be removed, and not else where: which said court shall deses of remo- termine the same, and if there be any defects of form in such order, the said court shall cause the same to be certified and amended without any costs to the party, and after such amendment shall proceed to hear the truth and merits of the cause; but no such order of removal shall be proceeded upon unless reasonable notice be given by the overseers of the township or place, appealing unto the overseers of the township or place from which the removal shall be, the reasonableness of which notice shall be determined by the court to which the appeal is made, and if it shall appear to said court that reasonable notice was not given, then the appeal shall be continued to the next court, at which term the same shall be determined.

SEC. 16. If any person be removed by virtue of this law, from one county, township or place to any other place within this state, by warrant or order under the hand and seal of any justice of the peace as aforesaid, the overseers of the poor of the township or place to which the said person shall be so removed, are hereby required to receive said person

SEC. 17 Whereas it sometimes happens that men separate themselves, without reasonable cause, from their wives, and desert their children, and women also desert their children, leaving them a charge upon the said county or place aforesaid, although such person may have estates which would contribute to the maintenance of such wives or children, it shall and may be lawful for the overseers of the poor of the said township or place, having first obtained a warrant or order from one justice of said county or place where such wife or children shall be so left or neglected, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such hus-

Men deserting their wives, & parents their children how to be dealt with.

band, father or mother as said justice shall order and direct, for providing for such wife and maintaining and bringing up of such child or children; which warrant or order being confirmed at the next circuit court for the county, it shall and may be lawful for the said court to make an order for the overscers to dispose of such goods and chattels by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits. or so much of them as shall be ordered by the said court, of his or her lands or tenements for the purposes aforesaid; and if no estate real or personal of such husband, father or mother can be found, wherewith provision may be made as aforesaid, it shall and may be lawful to and for the said court to order the payment of such sums as they shall think reasonable, for the maintenance of any wife or children so neglected, and commit such husband, father or mother to the common jail, there to remain until he or she comply with the said order, give security for the performance thereof, or be otherwise discharged by the said court; and on complaint made to any justice of the peace in any county, of any wife or children being neglected, such justice shall take security from the husband, father or mother neglecting as aforesaid, for his or her appearance at the next court, there to abide the determination of the said conrt, and for want of security, to commit such person to jail.

Sec. 18. And if any person or persons shall and himself or themselves aggrieved with any judgment of any justice, in pursuance of this act, such person or persons may appeal to the C. next circuit court for the county where sentence was given, except in cases of removal and cases of poor persons becoming chargeable in one place, who are legally settled in another, as is otherwise provided by this law,

whose decision in all such cases shall be conclusive.

SEC. 19. If any action shall be brought against any overseer or other person in his aid, and by his command shall do any thing concerning his office, he may plead the general issue, and give this act and every special matter in evidence, and if the plaintiff shall fail in his action, discontinue the same or become non

suit, he shall pay the costs.

SEC. 20. Whereas it is intended that impartial justice shall be admistered to all citizens, as well to the poor as to the rich, which poor citizens have not ability to sue according to the laws of the land, for redress of wrongs and injuries daily done to them, as well concerning their persons and their inheritance, as other causes, for remedy whereof-Every poor person who shall have a cause of action against any person within this state, or who shall be defendant in any suit, shall have by. discretion of the court before whom he or she would sue, writs original, writs of subpæna and other process according to the nature of his or her cause, nothing paying for the same; and the said court shall direct the clerk to issue the necessary procees, shall assign to him or her counsel, learned in the law, and appoint all other officers requisite and necessary to be had for the speed of the said suit, who shall do their duties without any reward for their service, help and business in the same; and if any counsel so assigned as aforesaid, shall take or receive any fee or reward therefor, either directly or indirectly, he shall forfeit and pay the sum of five hundred dollars, to the use of the party aggrieved, to be recovered by action of debt, with costs of suit.

Suits of the poor to be conducted gratis.

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ter in evidence.

> Sec. 21. Any judge of the circuit court in this state, shall have the same powers in vacation, to order the clerks of their respective courts to issue writs and other process for any poor person, according to the nature of the

cause, and to assign counsel and to appoint all other officers requisite and necessary to be had

for the speed of the suit. Sec. 22. On the application of any poor person to the said courts or judges, for any writ or writs, or other process as aforesaid, it shall Applicant to be the duty of the said poor person previous- make oath ly to make oath before a court judge or jus- that he is not tice of the peace, that he, she or they (as the worth 10 dolcase may be) are not worth in property, clear of all debts, ten dollars, and that he, she or they consider themselves unable either by industry or otherwise, to procure a sufficiency of money to carry on or defend said suit or suits, mentioning the suit or action; and that injustice as he, she or they believe is likely to be done them for want of money or property sufficient to carry on the said suit or action: which oath shall be attested by the judge, clerk or justice administering the same, and shall be lodged with the court or judge to

whom the application is made: Provided, that

any defendant, gaining any suit or action

brought against them by such poor person,

shall not be held responsible for, or bound to

pay any costs that may have accrued in defen-

ding such suit or action: Provided also, that

if any poor person or persons shall obtain a judgment, he, she or they shall recover full

costs, and that the officers concerned shall re-

ceive their fees accordingly.

Sec. 23. Each and every person who shall pauper swear take a false oath under the twenty-second sec- ing falsely tion of this law, upon conviction thereof by in- guilty of perdictment, shall suffer the pains and penalties

of perjury.

Sec. 24. The board of county commissioners of the several counties of this state, are Com. of C. to hereby authorised to appoint some suitable appoint agent person or persons to settle with the overseers to settle with of the poor in the several townships of their overseers. respective counties, as often as they may think it necessary, and also to make to the overseers

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of the poor and all other persons performing any daties in compliance with this act, a reasonable compensation for their service.

Sec. 25. The overseers of the poor on complaint made to them, that any person or persons not citizens of their respective townships. is or are lying therein sick or in distress, without friends or money, so that he, she or they case of sickness or death, are like to suffer, to examine into the case of such person or persons, and grant such temporary relief as the nature of the case may require: Provided, such person or persons cannot be removed to the place where he, she or they have a legal residence; and should any such sick person die, the reasonable expences of the funeral shall be paid by order of the overseers of the poor in the proper township, and the board of county commissioners of the proper county at their next meeting, shall examine such account, and if found reasonable, shall give an order on the county treasurer for the amount thereof

> Sec. 26. All laws and parts of laws heretofore in force, for the relief of the poor, are hereby repealed. This act to take effect and be in force from and after its publication.

1111 4/6 1111 CHAPTER XV.

AN ACT to regulate General Elections.

APPROVED-January 7th, 1818.

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That the board of county commissioners at their first meeting in each and every year, shall appoint for every township within their respective counties, one respectable elector, residing therein, as an inspector of elections, who shall serve as such one year, and until another person is appointed to take his place, and shall cause a suita-

ble number of blank forms of poll-books and election returns to be made out at such meeting, (headed and certified as the nature of the case may be) for each inspector so appointed; a certified transcript of which appointment, together with the blank forms, they shall give into the hands of the sheriff of the county, whose duty it shall be to forward them to the proper person, at least ten days previous to the next election.

SEC. 2 Each inspector shall, previous to the time of opening the election, take to himself two other qualified voters of his township, who together with himself, shall be judges of tion to be apar. elections for such township, during the time pointed. such inspector is appointed to serve; which judges shall at such election appoint two suitable persons as clerks of such election.

Sec. 3. Every inspector and judge of an election shall, before such election be opened, be sworn or affirmed that he will faithfully and impartially do the duties assigned him by law, clerks to be that he will not knowingly permit any person sworn. to vote who is not qualified according to the constitution of this state, nor will he knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote, more than is necessary to give satisfactory information of the qualification of such person as a voter; and if no person present is authorised to administer oaths or affirmations, then one of the judges shall swear or affirm the inspector, and the inspector being sworn or affirmed, shall swear or affirm the other judg. es; the inspector shall also swear or affirm the clerks of election faithfully and impartially to discharge their duties as clerks of e. lection.

SEC. 4. It shall be the duty of the inspector of elections, to attend at the place of holding elections in his township, on or before nine o'clock of the morning of the day of election, and if no inspector should appear by that time,

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Inspectors of election to be appointed.

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Inspector fai- then the voters of the township present shall appoint an inspector, who shall be governed in all things as is herein directed for inspectors appointed by the commissioners; and any vacancy that may happen in the appointment of a judge or judges of election, shall be supplied by the inspector as in the first instance.

Elections. sed-

Sec. 5. All elections shall be opened between the hours of nine and eleven o'clock of the day of election, and continue open until when opened four o'clock in the afternoon of said day, afand when clo ter which hour the judges may close the polls at any time when all the voters present have voted or had an opportunity of voting, but shall not be compelled to wait more than fifteen minutes without a vote, until they close the polls, nor shall the polls be kept open after six o'clock.

SEC. 6. Each qualified elector may vote once and no more; and if any person shall attempt to vote more than once, or to hand in two or more tickets folded together, or having voted in one township of his county, shall afterwards go into another on the same day and vote or attempt to vote, every person so offending shall, on conviction thereof, be fined in any sum not exceeding fifty dollars, and shall moreover be rendered incapable of voting or holding any office in this state for the next two years thereafter.

of an election

Penalty for

voting in dif-

ferent town-

ships.

SEC. 7. It shall be the duty of the inspector, Further duty before he proceeds to receive any votes, to of the officers cause it to be proclained aloud, that the election is opened; and when any person offers to vote, the inspector shall call out his name, and if there be no objection to the qualification of such person as a voter of that county, he shall receive his ticket and in the presence of the other judges, put it into a box to be provided for that purpose, when the name of such person whose ticket is received. shall be again distinctly repeated by one of the other judges in the presence of the clerks, each of whom shall keep a separate list thereof, numbering every name taken down so that it may be seen at any time whether their lists agree, and if an inspector, judge or clerk of election shall attempt to pry into or find out the names of any persons on a ticket that is handed in folded, or expose any such vote, he or they so offending, shall be liable to the same penalty as contained in the nineteenth section of this act.

SEC. 8. Every ticket handed in shall contain the name of every candidate such voter Tickets to intends voting for, either in writing or print, written or designating the office to which he wishes each printed. to be elected, and if more persons are designated to any office than there are candidates to be elected, such part of the ticket shall not be counted to either of them ; but no ticket shall be lost for want of form, if the judges of the election can determine to their satisfaction the person voted for, and the office intended to be

elected to.

SEC. 9. If any difficulty should arise in the course of an election hereafter to be held. in determining on the qualification as a voter, of any person wishing to vote, the inspector of such election is hereby authorised to swear or Electors may affirm such person to answer such questions as may be asked him relating thereto, or any bystander and the judges of said election shall decide from the examination as to the legali-

ty of such vote.

SEC. 10. When the polls are closed, or at any time after four o'clock of the afternoon, and the judges are at leisure, they may open the box and commence canvassing the votes, votes to when the tickets shall be taken out carefully, one by one, by the inspector who shall open them and read aloud the names of each person written or printed thereon, and the office for which every such person is voted for, and shall then hand it to one of the judges, who shall repeat the same, and hand it to the other

judge, who shall string it on a thread of twine prepared for that purpose; but no judge or clerk of election shall vote after they begin to count the votes, nor shall they publish a state. ment of the polls until it is proclaimed by order of the inspector that the election is clos-

Certain tickets may be refected.

SEC. 11. As the inspector shall open and read the tickets, each clerk shall carefully mark down the votes each candidate shall receive, in separate columns prepared for that purpose, with the name of such candidate written at the head thereof, and the office he is voted to fill; but if two tickets are found deceitfully folded together they shall both be

rejected.

Certificaie to be given to the clerk of C: C.

SEC. 12. As soon as all the the votes shall be read off and counted, the judges of the election shall make out a certificate under their hands, stating the number of votes each candidate received, designating the office for which he was voted to fill; which number shall be written in words at full length; and the certificate, together with one of the lists of voters, and one of the tally papers, shall be put into the hands of one of the judges of election, who shall on the ensuing Wednesday deliver the same to the Clerk of the Circuit Court at the Court House or place the courts are held, of such county, (or in his absence to his deputy,) who shall, in the presence of all the judges of election who attend from the different townships, between the hours of twelve and four o'clock, compare the different returns, and the persons having the highest number of votes, for all offices to be elected by the voters of that county only, shall be declared to be duly elected; and the Clerk of the Circuit Court shall forthwith give them certificates of their election accordingly: but if two or more should be equal in votes, the clerk and judges present shall decide by lot which is elected,

Sec. 13. The Clerk of the Circuit Court Certificate of shall also make out in fair hand, in words at Gov. Lt. Gov full length, a certificate of the number of votes and Repreeach candidate for Governor and Lieutenant sentatives in Governor received, according to such return; Congress, to which certiflicate he shall seal up and transmit to the Speaker of the house of Representatives, as directed by the Constitution of this state; and a certificate of the return of votes for a representative or representatives to Congress; and of the person or persons elected for sheriff or coroner, shall be forthwith forwarded to the office of the Secretary of State. It shall be the duty of the Secretary of State, on receiving the returns for representatives to Congress, to compare said returns, and certify to the Governor, for the time being, the person or persons having the highest number of votes duly elected, whose duty it shall be to give such person or persons a certificate of his or their election, attested by the Secretary of State.

Sec. 14. The list of votes, tally papers and certificate of judges, which are directed to be List of votes forwarded to the clerk at the court-house or to be preplace where the courts are held of the county, shall be preserved by said clerk, to be inspected by any person who may wish to examine the same; and the other papers and tickets shall be preserved and kept by the inspector, for the term of six months, for the inspection of any of the voters of the township, who

may wish to examine them.

SEC. 15. When the seat of any representative to Congress, or senator, or representa- When writ of tive in the General Assembly of this state, shall election to be become vacant, the Governor, for the time being, shall issue his writ of election to the proper sheriff or sheriffs, commanding him or them to proclaim, that on a certain day, to be designated in said writ, there will be an election held to fill such vacancy; due notice of which proclamation each sheriff shall cause to be giv-

on to each inspector of elections, in the several townships throughout his county; and such election shall be governed in all respects as general elections are.

Mode of concompose one district.

SEC. 16. When two or more counties shall be joined together to compose one senatorial or representative district, the clerks of the cirlection where cuit court of each county respectively, shall, two counties on the return day of each election for senator, make out a certificate of all votes received by each candidate for senator or representative, and deliver the same to the sheriff; and the sheriff of each county of such senatorial or representative district, shall meet on the Saturday following, at the court house of the oldest county in such district, where they shall compare the several certificates, and jointly give the person having the highest number of votes a certificate of his election: but if any two shall be equal and highest in votes, they shall decide by lot which is elected.

Penalty on those attempt. ing to restrain the freedom of elections.

Sec. 17. If any person or persons shall use any threats, force or violence, or attempt to awe any voter so as to restrain him in the freedom of choice, or offer any fee or reward, in meat, drink or otherwise, in order to persuade any elector to vote contrary to his own mind, or shall, on the day of election, give any public treat, or direct any person to do it on his behalf, with a view to obtain any vote or votes for himself or any favorite candidate, every person so offending shall, on conviction thereof, by presentment or indictment, be fined in any sum not exceeding five hundred dollars, and shall, moreover be rendered incapable of holding any office of profit or honor for the next two years thereafter.

Sec. 18. The commissioners shall provide Ticket boxes a sufficient number of ticket boxes, at the exto be provid- pense of the county, for the several inspeced. tors, to be kept by them and delivered over to their successors from time to time.

Sec. 19. If any commissioner, sheriff,

clerk of the circuit court, or inspector, judge renalty on of or clerk of election, shall neglect or refuse to ficers of elecperform the duties enjoined upon him by this tion neglectact, or having taken upon himself to perform ing their dusuch duties, shall be guilty of fraud and corruption in doing such duties, he or they so offending, neglecting or refusing, shall, on conviction thereof be fined in any sum not exceeding five hundred dollars, together with costs of suit, by presentment or indictment.

SEC 20. Each inspector, clerk or judge of e- Compensalection shall have credit for one day's work on tien to offithe public roads for every day he shall be em- cers.

ployed in attending election.

SEC. 21. The commissioners shall allow Further comthe returning judges of election a reasonable pensation. compensation for their services rendered in compliance with the provisions of this act.

SEC. 22. If any candidate or elector of the proper county shall choose to contest the validity of any election, or the right of any person proclaimed duly elected in any county, to election. his seat in the General Assembly of this state. such person shall give notice in writing to the person whose election he means to contest, or leave a written notice thereof at the house where such person last resided, within ten days after such election, expressing therein the points on which the same is contested, and shall also give notice to the inspector, judges and clerks of the township or townships, where such grounds for contesting the election of any candidate, may have arisen, as in case of the person proclaimed duly elected, and shall within the same time give notice to the sheriff of the county, who shall thereupon summons the county commissioners of the proper county, who shall be severally obliged to attendunder the penalty of fifty dollars each; the sheriff shall appoint a place and time for the commissioners to meet within the county, which shall be within twenty days after the election; the said commissioners, or any two

Method of

of them, shall have power to issue subpænas, and compel the attendance of witnesses to give evidence under the penalty of fifty dollars, to be levied on each and every delinquent who shall have been duly served with process, and the said commissioners so met shall hear and certify, under seal, all testimony relative to said contested election, to the Speaker of the House of Representatives or President of the Senate, as the case may be, at their next General Assembly.

Who may contest an election, and what testimony admissibie.

SEC. 23. No person shall ontest any election unless he is an elector of that county in which the elections are held; nor shall any testimony be received except such as goes to shew mat conduct or corruption in some one or more of the in pectors, judges or clerks of the proper county; nor shall any testimony be received which does not relate to the points specified in the notice: copies attested and sworn to by the person who delivers or leaves said notices, shall be delivered by said commissioners at the time of their meeting, and previous to their taking any persons testimo-

Sec. 24: All laws and parts of laws, heretofore in force in this state regulating elections, hereby repealed.

This act to take effect and be in force from and after its publication.

CHAPTER XVI.

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AN ACT to provide for the election of Senators and Representatives from this State to the Congress of the United States.

Approved-January 3, 1817.

§ 1. Be it enacted by the General Assembly of the State of Indiana, That when the term of

service of any senator in congress from Senators in this state is about to expire it shall be congress, the duty of the General Assembly, at their when & how elected. session last preceding the expiration of the term of service of such senator to elect by joint ballot of both houses, (on such day and at such place as they may agree upon) a suitable person to serve as a senator from this state to the congress of the United States for the next succeeding six years : Provided, That no person shall be considered elected. unless he gets a number of votes equal to a majority of all the voters present.

Sec. 2. In all such elections the President of the Senate shall preside and there shall be two tellers, one to be appointed by the Presi- the election. dent of the Senate, and one by the Speaker of the House of Representatives, in their houses respectively, before they meet to conduct such election; notice of which appointments shall be given to each house respective. ly when made, by such messenger as the President of the Senate and Speaker of the House of Representatives shall direct; and in voting each member shall be called alphabesically, beginning first with the senators; and when voting it shall be the duty of the secretary of the senate, and clerk of the house of representatives, to attend and take down the name of each person voting, also a tally of the votes received by each person voted for as the tellers read the tickets; which tally papers they shall compare after all the votes are counted out, and if they agree, they shall jointly sign each of them, and hand them to the President of the Senate, who, together with the Speaker of the House of Representatives, shall examine them; and if any one person is elected, he shall be proclaimed by the President of the Senate duly elected to serve as a senater of this state to the senate of the United States, for the term of six years

from and after the third day of March next succeeding such election; but if no person should be elected they shall continue to ballot again and again until some person is elected; Provided however, If after five ballotings there's ould be no election, the President of the Senate may adjourn such election to some future day during said session.

Governor to son elected a certificate.

Sec. 3. It shall be the duty of the presigive the per- dent of the senate and speaker of the house of representatives, to certify to the Governor the person elected, whose duty it shall be, to give to the person elected, a certificate of his election, under his hand and seal of the state.

May fill vacancies.

Sec. 4. Senators to fill vacancies that may happen in the senate of the United States. shall be elected as heretofore directed in this act, and when any vacancy may happen during the recess of the General Assembly, the Governor shall appoint a person to fill such vacancy until superceded by a person elected as heretofore directed.

Representative in congress, when and how elected.

Sec. 5. A representative to congress from this state, shall be elected on the first Monday of August eighteen hundred and seventeen, for the fifteenth congress, and on the first Monday of August eighteen hundred and eighteen, for the sixteenth congress; and a representative or representatives from this state to each succeeding congress of the United States, shall be elected biennally thereafter.

CHAPTER XVII.

AN ACT to provide for electing county and township officers.

APPROVED-January 28, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That whenever

there shall be a vacancy in any county of this state, in the office of associate judge, clerk of Notice of ethe circuit court or recorder of the county, or lection to fill the term of service of either of the aforesaid vacancies by officers shall have expired, it shall be the duty whom given. of the sheriff of such county, or person acting as sheriff, on being notified thereof, to cause an election to be held in such county, to fill the vacancy, by giving public notice thereof in some newspaper of the county, or by written notice set up in the several townships wherein such elections are to be held, at least twenty days before such election; which election shall in all respects be governed as general elections are. The election return for each judge, clerk and recorder, shall be forwarded by the Return thereclerk of the circuit court to the office of the of. secretary of state, within ten days after received, unless in cases of contest, in which last case, it shall be made as soon as the contest is decided, unless the election shall be set aside; and the person returned elected shall be commissioned by the governor, and qualified into office according to the constitution and laws of this state: Provided satisfactory evidence of such vacancy shall have been filed in the office of the secretary of state.

SEC. 2. The county commissioners in each and every new county in this state, shall, at their first meeting, or as soon thereafter as may be, lay off their respective counties into a suit- Counties diable number of townships, not exceeding eight, describing the bounds thereof; which bounds shall be fairly recorded. The board of county commissioners in each county in this state, shall from time to time make such alterations in the bounds of townships, and such new townships (if they have not previously made eight in such county) as they may think proper: Provided however, no new township shall be laid off without an application from at lest thirty citizens, residing within the bounds of such intended new township, by petition;

vided into townships. which petitioners, or some one of them, having published such intention of applying for a new township, by setting up a written notice thereof in three of the most public places within such bounds, at least thirty days before such application is to be made.

SEC. 3. When the board of county commissioners shall divide any new county into townships or make any new township, they shall appoint an inspector of elections in each new township, and order an election in every The number such township for such number of justices of of J. P appor the peace as they shall assign to each, not exceeding three to any one township; which election shall be governed in all respects as general elections are, and the persons having the highest number of votes (to the number to be elected in such township,) shall be elected; and the returns of such election shall be made to the clerk of the circuit court of the proper county the Wednesday following the election, a certified copy of which return shall be forwarded by the said clerk, to the office of the secretary of state within ten days after received, unless in cases of contested elections, certifying that such persons have been duly elected justices of the peace in such township and county; and the persons so returned as elected, shall be commissioned by the governor and qualified into office in the same manner that associate judges are commissioned and qualified into office.

SEC. 4. When, in the opinion of the board of county commissioners, it shall be necessary, Number of J they may order two additional justices of the peace to be elected at each county seat, and one in each incorporated town in said county, to reside therein: Provided however, That all the electors of the township wherein such election is held, shall be entitled to vote at such elections.

> Sec. 5. Whenever any justice of the peace shall remove out of the township wherein he

shall have been elected, or the lines thereof bo so altered as to leave him without the bounds of such township, his office shall be vacated. and the commission of such justice of the peace shall be of no force nor authority for him to act in any other township in such county; and in case of a vacancy in the office of a justice of Office of J. F. the peace by removal or otherwise, or when how vacated, the term of service of any justice of the peace & how filled shall have expired, it shall be the duty of the sheriff or person acting as sheriff in such county, being satisfactorily informed thereof, to order an election to fill such vacancy, which election shall be conducted as herein provided.

SEC. 6. The annual election for county commissioners shall be on the first Monday

of August.

SEC. 7. All contests of elections for county and township officers, shall be governed by lections. the law regulating general elections, except that the county commissioners, when called together to receive testimony in cases of contested elections, shall be the judges to decide the contest of such county and township officers as aforesaid.

Sec. 8. When the governor shall receive the resignation of any associate judge, clerk of the circuit court, recorder of any county, sheriff, coroner or justice of the peace, it is hereby made his duty to notify the sheriff of notify sheriff the proper county (or person acting as sheriff,) of vacancies. thereof, as soon as can conveniently be done, in order that the vacancy occasioned by such resignation may be filled; and in all cases where the clerk of the circuit court shall return any person duly elected, to the office of the secretary of state, to fill any vacancy in any of the aforesaid offices, he shall forward such information as he shall deem necessary to shew that such office has been vacated by death or otherwise, as the case may be.

All acts and parts of acts coming within the perview of this act, be, and the same are here-

corporated town.

each town-

Return of e-

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lection there-

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by repealed; and this act shall take effect and be in force from and after its passage.

1111 4/4 1111 CHAPTER XVIII.

A JOINT RESOLUTION concerning E. lection Districts; and for other purposes.

APPROVED-January 28, 1818.

Resolved by the General Assembly of the State of Indiana, That each person qualified to vote for members of either house of the general assembly of this state, shall be entitled to vote in the same districts (and no other) for senators and representatives, as though no change had taken place in the bounds of the counties since the adoption of the constitution, until a new apportionment shall be made by

Resolved further, That nothing in the act for assessing and collecting revenue, shall authorise the commissioners to assess any tax on any other bond servant than persons of color.

CHAPTER XIX.

AN ACT providing for the commissioning of Sheriffs and Coroners.

APPROVED-December 20, 1816.

Sec. 1. BE it enacted by the General As-Persons re- sembly of the State of Indiana, That it shall be turned elec- the duty of the governor, as soon as the nature ted to be com of the case will admit, to commission the sevcommissions eral persons returned as for elected sheriffs and sent to the coroners in the several counties in this state, clerks of cir- at the general election held on the first Moncuit courts in day of August last, which commissions he shall cause to be forwarded to the clerks of the circuit courts in the several counties where

such sheriffs and coroners shall respectively reside.

Sec. 2. It shall be the duty of the clerk of the circuit court in each county, on the receipt Clerk to notice of a commission for a sheriff or coroner, to fy person egive notice thereof to such person elected as sheriff or coroner, and to notify such person to give bond come forward and give bond and security for and security, the faithful discharge of the duties of his office.

SEC. 3 It shall be the daty of the clerk of Penalty and the circuit court, to take of the sheriff elect a condition of bond with two or more securities, to be appro- bond. ved of by the two associate judges in the sum of five thousand dollars, payable to the Governor for the time being or his successors in office, conditioned for the faithful discharge of his duty and for the safe keeping and delivering over according to law, to the proper persons, all sums of money that may come into his hands by virtue of his office; and of the coroner elect in the sum of two thousand dollars payable as aforesaid, for the faithful discharge of his duty, and for the safe keeping and delivering over according to law, to the proper persons, all sums of money that may recorded in come into his hands by virtue of his office; recorder's of which bonds shall be forthwith recorded in the fice and filed recorder's office of the proper county, and fi- of the circuit led in the office of the circuit court of the res- court. pective county in which they are taken; and it shall be the duty of each of the clerks of the Clerk to send circuit courts, on the same being filed in his certifiedcopy to the secreoffice, to transmit a certified copy thereof to the tary. office of the secretary of state, to be by him preserved. That in all motions, or suits, to On motions be made or brought upon such bond against a. or suits, such copy, eviny sheriff or coroner in the name or for the use dence of the and benefit of the state, or any individual existence of thereof, such copy filed as aforesaid, small be bond, and to sufficient evidence of the existence of such be proceeded bond, and the same proceeding may be had ginal. thereon as on the original bond. SEC. 4. The clerk of the circuit court is

W 28

counties.

minister oaths or affirmations.

Clerk to ad- hereby authorised to administer to every person who is commissioned as sheriff or coroner after such person has given bond and security as required by this act, the several oaths or affirmations required by the constitution and laws of this state, which he shall certify on the back of such commission, and file a copy of such certificate in his office, which commission so certified, shall be sufficient authority for the person thus qualified, to perform all the duties that belong to his office : Provided however, The circuit court, when in their opinion it becomes necessary, may require of such sheriff or coroner, an additional bond, in such sum and with such security as they shall deem sufficient.

Circuit court may require additional bond, &c.

How long to serve.

SEC. 5 Sheriffs and coroners shall be commissioned to serve two years from and after the time of their election and until successors are chosen and qualified. SEC. 6. Whenever the General Assembly

shall lay off a new county, the Governor shall

and until successors are chosen and qualified.

Governor to make appoint appoint and commission a sheriff and coroner ments in new to act as such, until the next general election, counties.

Governor to fill vacancies

S. c. 7. If any vacancies shall happen in the office of sheriff or coroner, or if any person elected as sheriff or coroner shall neglect or refuse to give bond and security as required by this act, or shall refuse to qualify, the Governor shall appoint and commission, as soon as he shall be informed thereof, a person to supply such vacancy until the next general e-

missioned, give bond & security.

lection, and until a successor is chosen and qualified. Sec. 8. Every person hereafter elected or persons elec- appointed in conformity to the previsions of ted to be com the fifth section of this act, to the office of sheriff or coroner shall be commissioned, give bond and security and be qualified into office in all respects as is directed in this act.

SEC. 9. The coroner shall perform the duties of sheriff in all cases where the sheriff is interested or prejudiced, and also in case of vacancy by death, resignation or otherwise, in When Corothe office of sheriff, the coroner shall perform form the duthe duties of such office. until a sheriff is ap ties of sheriff. pointed or elected and qualified, according to the provisions of this act.

This act to take effect from and after its

passage.

CHAPTER XX.

AN ACT regulating the duties of Sheriffe. and Coroners.

APPROVED-January 22, 1818.

sembly of the State of Indiana. I hat it shall be the duty of each and every sheriff and coroner to keep the peace by causing all offenders General pow against law in their view, to enter into recog- er and duty nizance with securities to keep the peace, and of sheriffs & to appear at the next circuit court in the said county, on the first day of the term thereof; and in case of refusal, to commit to the common prison; which recognizance shall be certified and returned by the sheriff or coroner on or before the first day of the next term. It shall also be their duty to quell and suppress affrays, riots and insurrections, for which end they shall, and are hereby authorised and empowered to call to their aid the power of the county-they shall pursue and commit to jail all fellons and traitors-they shall execute all warrants, writs and process. which by law shall appertain to the duties of their office, and which shall be directed to them by legal authority. The sheriff shall duly attend to all courts of record at their respective terms or sessions in his county, and shall have the cus-

Sec. 1. BE it enacted by the General Astody of the jail of the county, and shall also do and perform all other duties that are, or shall be enjoined on him by law.

SEC. 2. Every coroner as soon as he shall be notified of the dead body of any person, supposed to have come to his or her death by violence or casualty, found or lying within his county, shall make out his warrant, directed queshow im to the constable of the township where the dead body is found or lying, requiring him fortwith to summon a jury of good and lawful men of the same township, not less than fifteen in all, so that twelve may be present to appear before such coroner at the time and place in his warrant expressed, and to enquire upon a view of the body name here the person deceased, if known) there lying dead, how and in what manner, and by whom he or she came to his or her death; and every constable to whom such warrant shall be directed and delivered, shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with the proceedings thereon unto the coroner who granted the same; and every constable failing to execute such warrant or of returning the same as aforesaid, shall forfeit and pay the sum of three dollars; and every person summoned as a juror as aforesaid, that shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding three dollars, which fine shall be recovered by action of debt, before any justice of the peace in the proper township, and be applied to the use of the county Seminary.

SEC. 3. The coroner shall administer an oath or affirmation to twelve of the jurors that shall appear, to the foreman first, in the following manner: You do solemnly swear or affirm (as the case may be) that you will diligently enquire, and true presentment make, how and in what manner and by whom A B, who here lies dead, come to his death, and

that you will deliver to me the coroner of this county, a true inquest thereof according to such evidence as shall be laid before you, and according to the best of your knowledge: "So help you Gop."

SEC. 4. The other jurors shall swear or affirm (as the case may be) in the following form: Such oath or affirmation as your foreman hath now taken before you on his part, you and each of you will observe and keep on your respective parts : "So help you God."

Sec. 5. The jurors being sworn, the coroner shall give them a charge upon their oaths to declare of the death of the person, whether he or she died of felony or mischance, or accident, and if of felony, who were the principals and who were accessaries, with what instrument he or she was struck or wounded, and so of all prevailing circumstances which may come by presumption; and if by mischance or accident. whether by the act of man, and whether by hurt, fall, stroke, drowning or otherwise; also, to enquire of the persons who, if any were present, of the friends of the body, his or her relations and neighbors whether he or she was killed in the same place where the body was found, and if elsewhere, by whom, and how the body was brought thence, and of all other circumstances relating to the said death, and if he or she died of his or her own felony; then to enquire of the manner, means or instrument, and of all circumstances concerning it.

SEC. 6. The jury being charged shall stand together, and proclamation shall be made for any persons who can give evidence, to draw near and they shall be heard.

Sec. 7. Every coroner is further empowered to send his warrant for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the summoned & matter in question, he shall administer an oath or affirmation to them in the following

Jurors oath.

Coroner's charge to ju-

Witnesses

Foreman's math.

panneled.

form : You do solemnly swear or affirm, that the evidence you shall give to the inquest concerning the death of A B, here lying dead, shall be the truth, the whole truth and nothing but the truth: "So help you Gop."

Felons to be recognized.

SEC. S. The evidence of such witness shall be in writing, subscribed bythem, and if it relates to the trial of any person concerned in the death, then shall the coronor bind such witness or witnesses by recognizance in a reasonable sum for their personal appearance at the ext circuit court, to be holden within the same county, there to give evidence accordingly, and commit to the common jail of said county any witness or witnesses refusing to enter into such rocognizance, and shall return to the same court such inquisition, written evidence and recognizance by him taken; and the jury, having viewed the body, heard the evidence, and made all the inquiry within their power, shall draw up and deliver unto the coroner their verdict upon the death under consideration, in writing, under their hands and seals.

Coroner shall felonies.

SEC. 9. Upon an inquisition, found before notify J. P. of any coroner, of the death of any person, by the felony or misfortune of another, he shall speedily inform one or more of the justices of the same county thereof, to the intent that the person killing or being in any way instrumental to the death. may be apprehended, examined and secured in order for trial.

J. P. mayhold an inquest.

Sec. 10. In every case where the coroner shall be absent from the county, or unable to attend, it shall be lawful for any justice of the peace of the proper township, to hold an inquest over any dead body; which justice shall proceed in all respects as coroners are directed to do by the foregoing provisions.

This act shall be in force from and after its publication.

CHAPTER XXI.

AN Al T to regulate descents,

APPROVED-January, 2d, 1817.

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That the real and ing intestate personal estate of any person dying intestate, how their esshall descend to his or her children, or their tates shall descendants, in equal parts, viz: to the chil-descend. dren of a deceased child, the share of their Saving right deceased parent, saving however to the widow in all cases her rights of dower.

SEC. 2. If there he no children, nor their children, or descendants, then to the father; and if there descendants, how be no father, then in equal parts to the mo- estates to dether, brothers and sisters of such deceased scend. person dying intestate, and to their descend-

ants, or such of them as there be.

SEC. 3. When any person shall die intes- nal line shall tate without issue, having a title to any real mherit. estate, derived by purchase or by descent from the father, the mother of such person shall not inherit the same nor any part thereof, if there be living any brother or sister of such deceased person, or any brother or sister of his or her father, or any lineal descendant of either of them, except her right of dower which she may have therein.

Sec. 4 When any person shall die intes- ternal. tate having no issue, possessed of a title to any real estate, by purchase or by descent from the mother, the father of such person nor any child he may have by any other woman except his or her mother, shall inherit the same or any part thereof, if there be living any brother or sister of the mother of such person dying intestate or any lineal descendants of either of them, saving however to such father the right which he may have as tenant by the curtesy in said estate.

SEC. 5. The real and personal estate of persons dying intestate without issue, having no

For want of

When pater-

When ma-

paternal and maternal kindred, how to descend.

On failure of father mother, brothers or sisters, shall be divis ded into two equal parts, one of which shall go to the the paternal, the other to the mater. nal kindred, in the following order: first, to the grand father, if there be any, if not, to the grand-mother, and if there be neither grandfather nor grand mother, to uncles and aunts on each side and their descendants or such of them as there be: Provided however, The widow of such person dying intestate, having no issue, shall be entitled to all his personal, and half of his real estate, if he has no brothers or sisters, father or mother,

When estates shall go to the wife,

Proviso.

SEC. 6. When for want of issue of the intestate, and of father or mother, brothers or sisters, or their descendants, the estate as beand if no wife fore directed, to go in equal parts to the paterhow applied, nal and maternal kindred, shall for the want of such kindred go to the wife, but should he have no wife, then his estate shall be applied to the support of free schools in the county in which such property is situated.

Property advanced to into hot hoct

Sec. 7. In making dividends of the estate of any person dying intestate, among his or her heirs, any property that any one of them heirs throwo shall have previously received by way of advancement shall be taken into view, if such person shall apply or claim his or her rights of inheritance

SEC. 8. There shall be no difference made

between legitimate and illegitimate children,

in the inheriting of property that descends to

Legitimate & illegitimate children, on same footing. them through the mother.

Sec. 9. If any man shall marry a woman who has previous to her marriage, borne an illegitimate child or children, and shall acknowledge himself to be the father of such children, they shall be deemed legitimate.

Illegitimate children re--cognized, &c

> Sec. 10. When any lands shall descend from a person dying intestate to two or more heirs, any one of whom shall be an infant, feme covert, non compos mentis, or a non-resident, and the dividend of each share shall not

exceed one hundred dollars in the opinion of the court, it shall be lawful for such court to order the sale of such land, and the distribution of the money arising therefrom according to the right of each claimant : Provided al- Proviso. ways. That each heir residing in the state. shall be first duly summoned to shew cause if any he or she hath against such sale, and if any heir shall reside without the state, the court shall make an order for publication, in one or more public newspapers, published in the state; which on being inserted eight weeks successively in such paper or papers as the

CHAPTER XXII.

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court may direct, shall be a sufficient sum-

mons.

AN ACT subjecting real and personal estates to execution.

APPROVED-January, 7, 1818.

See. 1. BE it enacted by the General .13sembly of the State of Indiana, That the personal and real estate of every individual, company, body corporate or politic, including his, her or their goods, chattels, lands, tenements subject to ex and hereditaments, he, and the same are here- ecution. by made subject to execution, to be taken and sold according to the provisions herein after made in this act, and all goods, chattels, lands, tenements and hereditaments, whether in possession, remainder or reversion, whereof any person or persons may die seized or possessed, shall be subject to judgment and execution in the hands of the executor or executors, administrator or administrators of such decedent hands of exas in other cases made and provided.

SEC. 2. In all cases where execution shall issue against the goods, chattels, lands, tenements or hereditaments of any person or per-

Personal and real estate

Even in the ecutors. &c.

compos nonresident &c. regulations concerning,

Heirs non

X 24

first taken.

Proceedings in 7 years to discharge the execution.

Proceedings when the rent will not discharge the execution.

sons, company, body corporate or politic, executor or executors, administrator or administrators, it shall be the duty of the sheriff, or opersonal pro- ther officer whose duty it shall be to execute perty to be the same, to first levy upon his, her or their goods and chattels; but if no goods and chattels can be found, or if a sufficient quantity of such goods and chattels cannot be found to satisfy such execution, then and in that case, the sheriff or other officer, shall proceed to levy upon his, her or their lands and tenements, and summon a jury of twelve disinterwhen real es- ested free holders of his bailiwick, who shall tate will rent meet and examine the same, and after being sworn to determine according to the best of their judgment, if they shall be of opinion that seven years rent of the lands and tenements so takeu in execution, will sell for a sufficient sum to discharge the debt, damages and costs, then and in that case the sheriff, or other officer shall proceed to expose to sale the use of such lands and tenements so taken, for ready money, to the highest bidder, for a sufficient time to pay debt, and costs and damages: Provided nevertheless, That if the clear profits of such lands and tenements shall not be found by inquest of twelve men, to be sufficient to satisfy such debt, costs and damages as in the execution mentioned, in seven years, or, if hefore the extent be out any other debt or damages shall be recovered against the same debtor or defendant, his, her or their executor or executors, administrator or administrators, which cannot all be satisfied out of the lands or tenements so extended within seven years, then and in every such case, the sheriff or other officer, shall accordingly certify the same upon the return of such execution; whereupon a writ or writs of venditioni exponas shall forthwith issue to sell such lands and tenements for and towards satisfaction of such deht, damages and costs, in manner as is herein after provided: Provided however, No.

thing in this act shall be construed as to require the sheriff to call a jury as above directed, before he shall proceed to sell any real estate that is given up to him by the proper owner or owners, or his, her or their agent, or that is taken by him otherwise, unless requested so to do by such owner or owners, or his,

her or their agent.

Sec. 3. In case the lands, tenements and here itaments seized and taken in execution. shall not on sale thereof, produce the amount of the debt, damages and costs due thereon, it shall and may be lawful for the sheriff or other officer, by any other writ, to seize and take any other goods, chattels, lands and tenements and hereditaments, and thereupon, with all convenient speed, without any writ of ven- make a secditioni exponas, to make public sale thereof ond levy with for the most they will yield, and pay the price out venditioor value of the same to the party, towards sat. ni exponas. isfaction of his damages and costs; but before any such sale be made, the sheriff or other officer shall cause the same to be advertised in Notice of sale the nearest public newspaper, and also, in three of the most public places in the county in which the said goods and chattels, lands and tenements shall be, at least ten days before such sale shall take place; in which advertisements shall be set out the time and place where such sale shall take place; and upon such sale the sheriff or other officer shall make return thereof, endorsed or annexed to the said writ of execution, and give the buyer a deed duly executed and acknowledged for what is sold, but in case the lands and hereditaments so to be exposed, cannot be sold, then the officer shall make return upon the writ of execution, Levari facias that he exposed such lands or tenements to to issue, and sale, and the same remained in his hands un- the lands to sold for the want of buyers; which return be re-exposhall not make the sheriff or other officer lia- sed to sale, ble to answer the debt or damages contained in sold for want such writ of execution, but the writ of levari of bayers.

facias shall forthwith be awarded to the proper officer, commanding him to proceed again to advertise and expose such lands, tenements and hereditaments to sale as above directed.

Mansion house to be last sold.

Judgment

debtor may elect what

Sec. 4. The messuage or lands, or tenements upon which the defendant is chiefly seated, shall be the last taken and sold on execution, before the expiration of one whole year after judgment is given to the intent. that the defendant or any other person for him. her or them, may redeem the same; and when any writ of execution shall come into the hands of any sheriff or other officer, to be levied upon the real estate of any person or persons, it shall be his duty to levy upon such part thereof as he or they shall direct, and if any sheriff or other officer shall either take, propertyshall sell or dispose of the real or personal estate of be levied on. any defendant or defendants, in any other way or manner than is directed by this law, such sheriff or other officer shall forfeit and pay to senalty on ofthe defendant or defendants whose property shall be so taken and sold, the full value of provisions of such real or personal estate so taken and sold, to be recovered by bill, plaint or information, in any court of record proper to try the same : Provided however, If no property is shewn to the sheriff or other officer by the proper owner, he shall then proceed to levy upon any property belonging to such person or persons as he can find.

lating the this act.

feer for vio-

SEC. 5. When it appears upon the face of any writ of fieri facias that any one or more of the defendants against whom such writ is issued, are only security or securities for any one or more of the other defendants in such writ naprincipal first med, the sheriff or other officer shall, in such case, sell or dispose of all or so much of the personal estate or real estate of such principal defendant or defendants as such sheriff or other officer shall be able to find in his bailiwick as will satisfy the said execution and costs, before he shall set up or dispose of any part of the real or personal estate of such suretyor sureties, unless the said sheriff or other officer shall be otherwise directed by such surety or sureties: Provided always, that on any judgment or judgments obtained against Exception to any collector or collectors of public revenue, collectors they shall not, on execution or executions, is- surcties, sued against them, be entitled to any of the benefits herein contained in this act.

§ 6. That when any sheriff shall have sold lands on execution, previous to his death, remov al from office, or resignation, and the purchase Sheriff's sucmoney for the same shall have been paid with - cessor may out having made a deed for the same, it shall make dead the duty of the successor of such sheriff to make and execute to the purchaser or purchasers, his, her or their heirs or assigns a deed or deeds for the same; which deed or deeds so made shall be as valid and good in law as if the same had been made and executed by the sheriff who sold the land; and when any sheriff shall sell any land by virtue of any execution or executions to him directed, he shall return on the back of such execution or execu- ecution. tions, the quantity of land sold, the place where the land lies, the amount of purchase money, and the name of the person who purchased.

return of ex-

SEC. 7. When default or defaults have been or shall be made or suffered by any mortgager or mortgagers, of lands, tenements, or hereditaments, within this state, or by bis, her or fault. their heirs, executors, administrators and assigns of, or in payment of the mortgage money, or performance of the condition or conditions, which they or any of them should have paid or performed, or ought to pay or perform, in such manner and form, and according to the purport, tenor and effect, of the respective provisions, conditions or covenants, comprised in their deeds of mortgage or de-

feasance, and at the days times and placesia

Property of sold.

Mortgagee

Defendant's

plea.

the same deeds respectively mentioned, and contained in any puchase, it shall and may be may sue out a lawful to and for the mortgagee or mortgagees. writ of sci. fa. and him, her or them that hold the said deeds of defeasance, and his, her or their heirs, executors and assigns, any time after the expiration of twelve months next ensuing the last day whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to sue forth a writ or writs of scire facias, which the clerk of the circuit court for the county where the said mortgaged lands or hereditaments lie, is hereby empowered and required to make out, directed to the proper officer, requiring him by honest and lawful men of the neighborhood, to make known to the mortgager or mortgagers, his, her or their heirs, executors or administrators, that he or they be and appear before the judges of the said court to shew, if any thing he or they have to say, wherefore the said mortgaged premises ought not to be seized and taken in exection for payment of the said mortgage money with interest, or to satisfy the damages which such plaintiff or plaintiffs, in such scire facias, shall upon the record suggest, for the breach or non-performance of the said conditions; and if the defendant or defendants in such scire facias appear, he, she or they, may plead satisfaction or payment of part or all the mortgage money, or any other such lawful plea in evidence of the deed or debt as the case may require; but if the defendant in such scire facias, does not appear ou the day whereon the writ shall be made returnable, then, if the case be such that damages only are to be recovered, an inquest shall be forthwith charged to enquire thereof; and the definitive judgement therein, as well as all other judgments to be given upon such scire facias, shall be entered, and the plaintiff in the scire facias shall have execution by levari facias, directed to the proper officer, by virtue

whereof the said mortgaged premises shall be When morttaken in execution, and exposed to sale, in gaged premmanner aforesaid; and upon sale conveyed to sold or delivthe buyer or buyers thereof, and the money or ered to mortprice of the same, rendered to the mortgager gagee. or creditor, but for want of buyers to be delivered to the mortgagee or creditor, according to the tenor and effect of said mortgage; and when the said lands and hereditaments shall be sold or delivered as aforesaid, the person or persons to whom they shall be sold or delivered, shall and may hold and enjoy the same, with their appurtenances; and such estate or estates shall be discharged and freed from all equity and benefit of redemption, and all other incumbrances made or suffered by the mortgagers, their heirs or assigns, and such sales shall be available in law; and the respective vendees, mortgagees or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged as aforesaid; but before such sale shall be made, notice shall be given in writing, in manner and form Notice of as is herein above directed concerning the sale sale. of lands upon execution; any law or usage to the contrary notwithstanding.

Sec. 8. When any of the said lands, tenements or hereditaments, which by the direc. Overplus arition and authority of this law, are to be sold sing from for the payment of debt and damages in manner aforesaid, shall be sold for more than will ment creditsatisfy the same debt and damages, and rea- or. sonable costs, then the sheriff or other officer who shall make the sale shall render the overplus to the debtor or defendant, and then, and not before, the said officer shall be discharged thereof upon record, in the same court where he shall make return of his proceedings

concerning the said sales.

SEC. 9. No sale or delivery, which shall be made by virtue of this law, shall be extended to create any further term or estate to the vendees, mortgagees or creditors, than the

paid to judg.

lands or hereditaments so sold or delivered shall appear to be mortgaged for by the said respective mortgages or defeasible deeds.

Sale not void judgment.

Penalty on

ecution

Sec. 10. If any of the said judgments on reversalof which do or shall warrant the awarding of the said writ of execution, whereupon any lands, tenements or hereditaments, have been or shall be sold, shall at any time hereafter be reversed for any error or errors, then, and in every such case, none of the said lands, tenements or hereditaments, so as aforesaid taken or sold or to be taken or sold upon executions, nor any part thereof shall be restored, nor the sheriff's sale or delivery thereof be avoided: but restitution in such case shall be made, only of the money or price for which such lands may or shall have been sold. Sec. 11. Be it further enacted, that any sheriff

coroner, into whose hands any execution or executions may be placed for the collection of any debt or debts, damages or costs, and who shall fail or neglect to return the same on the officer failing proper return day thereof, shall on motion beto return exfore the circuit court of the proper county, he or they having had ten days previous notice of such intended motion, be subject to pay the full amount of the said debt or debts, damages and costs contained in such execution or executions with ten per centum damages thereon, together with the costs of such motion; which court is hereby required and enjoined to render such judgment on such motion, against such delinquent sheriff or coroner, unless such delinquent sheriff or coroner can shew satisfactory cause for such delinquency to be judged of by said court; upon which judgment execution shall issue against such delinquent sheriff or coroner; upon which execution no replevin shall be allowed or granted.

SEC. 12. All laws and parts of laws now in force in this state, subjecting real and personal estate to execution, are hereby repealed. This acl to take effect from and after its publication.

CHAPTER XXIII.

AN ACT to provide for the partition of real estate.

APPROVED-January 7, 1818.

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That when any person or persons is or are proprietor or petitioner to proprietors of any tract or tracts, lot or lots of give 4 weeks land within this state, and is or are desirous notice prior of having the same divided, it shall and may tohis applicabe lawful for the circuit court of the county C. to appoint where such land or lots may lie, on the ap- commissionplication of either party, notice of such ap- ers for makplication having been previously given by the party so applying for at least four weeks in some public newspaper in this state, to appoint three disinterested freeholders, residents of said county, not related to either of the parties, as commissioners for dividing the said tract or lots of land, and such commissioners having previously taken an oath or affirmation, before some justice of the peace in said county, honestly and faithfully to execute the trust reposed in them as commissioners aforesaid, shall proceed to make division of the said lands, lots, tenements and hereditaments, as directed by the court, among the owners and proprietors thereof, according to their respective rights; which partition being made by the said commissioners, or any two of them, and return thereof being made in writing, under their hands and seals to the said court, Commissionparticularly describing the lots or portions al- ers to be lowed to each respective owner or proprietor, mentioning which of the owner or owners, proprietor or proprietors are minors, if any such there be; which return, being acknowl- And to make edged by the commissioners making the same, partition to before any one of the judges of the court a- the C. C. for foresaid, for the said county, and accepted by acceptance. the court, and entered and recorded in the

clerk's office, shall be a partition of such lands. lots and tenements, therein wentioned.

When a division cannot to the owners the C. C. shall empower the comsell and convey the real estate+

Sec. 2. When any houses and lots are so be made with circumstanced, that a division thereof cannot out prejudice be had without great prejudice to the proprietors of the same, and the commissioners appointed to divide the same shall so report to the circuit court, the said court shall thereupmissioners to on give order to the said commissioners, to sell such house & lot or houses & lots at public vendue, and shall make and execute good and sufficient conveyance or conveyances to the purchaser or purchasers thereof, which shall operate as an effectual bar, both in law and equity, against such owners or proprietors, and all persons claiming under them, and the monies arising therefrom, to pay to the owners or proprietors of such house and lots, their guardians or legal representatives, as shall be directed in the said order.

Commissioners compensation.

SEC. 3. The said commissioners so appointed, shall be entitled to receive each one dollar and fifty cents per day, for their services rendered as aforesaid, which shall be equally apportioned amongst the owners or proprietors, and by them paid.

The ates of binding on the ward.

SEC. 4. The guardians of all minors shall be and are herebyrespectively authorised and the guardian empowered, on behalf of the respective minors, whose guardians they are, to do and perform any matter or thing, respecting the division of any lands, tenements and hereditaments, as is herein directed, which shall be binding on such minor or minors, and be deemed as valid to every intent and purpose, as if the same had been done by such minor or minors, after he, she or they had arrived at full age.

> Sec. 5. Provided always, that no division or sale shall be made by order of the said court as above directed, contrary to the intentions of any testator, as expressed in his last will and testament.

Pestators wills to be observed.

CHAPTER XXIV

AN ACT for the assignment of dower and prescribing the mode of proceeding there-

APPPOVED-January 7th 1818.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That when the heir or other person having the next im- sign dowes mediate estate of freehold or of inheritance. shall not within one month next after demand made, assign and set over to the widow of the deceased, the dower or just third part of and in all lands, tenements and hereditaments, whereof by law she is or may be dowable to her satisfaction, according to the true intendment of law, then such widow may sue for For neglect and recover the same by writ of dower, to be thereof a brought against the tenant in possession, or writ of dower may be sued such persons as have or claim right or inheri- out. tance, in the same estate, in manner and form as the law preser bes.

Sec. 2. Upon rendering judgment for any woman to recover her dower in any lands, ten- for refusal to ements or hereditaments, reasonable damages assign a. shall also be awarded to her from the time of ward. the demand and refusal to assign to her her reasonable dower, and a writ of seizin shall be directed to the sheriff of the county or coroner; and such sheriff or coroner to whom such writ is directed, shall cause her dower in such estate to be set forth unto her by three er shall be disinterested freeholders of the same county, made. under oath or affirmation, to be administered by any justice of the peace, to set forth the same equally and impartially, without favor or affection, as conveniently as may be.

Sec. 3. When estates, of which a woman is dowable, are entire, and when no division of dower in can be made by metes and bounds, dower rents and thereof shall be assigned in a special manner profits, as of a third part of the rents, issues and

within one month from demand thereof.

How assignment of down

Redress for negligent or wilful waste.

profits, to be computed and ascertained by the freeholders aforesaid, and no person that shall be endowed of lands, tenements or heredita. ments as aforesaid, shall wantonly or designedly commit waste thereon, or suffer the same to be done, on penalty of forfeiting that part of the estate whereupon such waste shall be made or suffered to have been made to him or them that have the immediate estate of freehold or inheritance, in remainder or reversion; and in case of negligent or inadvertent waste by her done or suffered, the damages that may be assessed for such waste to be recovered by action for waste.

Tenants in dower to make repairs

SEC. 4. All tenants in dower shall maintain the houses and tenements, with the fences and appurtenances, whereof they may be endowed in as good repair as the same have been delivered to them during the term, and the same shall so leave at the expiration thereof.

CHAPTER XXV.

AN ACT authorising aliens and foreigners to hold real estate within the State of Indi-

APPROVED-January 14, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That it shall and may be lawful for any foreigner or foreigners, alien or aliens, who are not the subject or subjects of, or in any wise owing allegiance to any prince, potentite or power, or foreign state, which is or shall be at the time of making the purchase herein permitted and allowed, at war with the United States of America, to purchase lands, tenements and hereditaments within this state, and to have and hold the same, to them, their heirs, assigns and legal representatives forever, as fully and

Aliens from a state at peace with the U. States may purchase real estate.

to all intents and purposes as any natural born citizen may or could do: Provided, That proviso requir such alien or aliens shall, previous to making ring a declarsuch purchase, manifest by his, her or their declaration, made according to the laws of coming acitthe United States, his, her or their bona fide izen. intention of becoming a citizen of the United States: And provided also. That nothing herein contained, shall be so construed or taken as to contravene any law of the United States, that is now or may be hereafter inforce relative to aliens and foreigners.

ation of intention of be-

CHAPTER XXVI.

AN ACT for the relief of occupying claim: ants of land.

APPROVED-January 28, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That in all cases where any occupying claimant, being in quiet possession of any land, for which such person can shew a plain and connected title in law or equity, derived from the records When occuof some public office, or being in quiet posses- pying claimsion of, and holding the same by deed, devise, ant shall be decent, contract, bond or agreement from and uable impyor under any person claiming title as aforesaid, ments. derived from the records of some public office. or by deed duly authenticated and recorded, or being in quiet possession of, and holding the same under sale for taxes, or under sale on execution against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, if any person or persons shall set up and-prove an adverse and better title to said lands, such occupying claimant holding as aforesaid, shall not be evicted or turned out of possession until he or she shall be fully

paid the value of all lasting and valuable improvements made on said lands by such occupying claimant, or by the person or persons under whom he or she may hold the same previous to receiving actual notice by the commencement of suit on such adverse claim. by such eviction, unless such occupying claimant shall refuse to pay the person so setting up and proving an adverse and better title, the value of the land without improvement made thereon as aforesaid, upon the demand of such successful claimant as herein after provided.

ments how. and by whom estimated.

SEC. 2. The court rendering judgment in any such case against such occupying claim-The value of ant, shall, at the request of either party, appoint three judicious disinterested freeholders of the county where such judgment may be rendered, who shall within twenty days after receiving an order, to be made out by the clerk, under the seal of the said court for that purpose, assess on oath or affirmation, the value of all lasting and valuable improvements made as aforesaid, on the land in question, previous to receiving actual notice as aforesaid, of such adverse claim; and in assessing the value of such improvements, the commissioners shall take into consideration all the damages which the land in question may have sustained by waste or cultivation, and deduct the same from the estimated value of such improvements; and the said commissioners shall also assess the value of the land in question, at the time of rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste or cultivation as aforesaid; which assessment or valuation shall be signed and sealed by such commissioners or a majority of them, and deposited with the clerk of the court by whom they were appointed, before the next term thereof; and if either party shall think himself or herself aggrieved by such assessment or valuation, the court may, lupon the application of such

Persons agstrieved, how Mressed.

person at the next term, for good cause shown. order a new assessment or valuation, and appoint other commissioners as herein before directed, who shall proceed in the same manner as herein before directed.

Sec. 3. The successful claimant in all such sases, may at his election, either dem nd of the occupying claimant the value of the land The successes without the improvements so as aforesaid as- may sell the sessed, and convey the land in question to land, or pay such occupying claimant, or pay the occupy- the value of ing claimant the value of the improvements so improveas aforesaid assessed, within such reasonable occupying time as the court shall allow; and if such suc- claimant. cessful claimant shall pay the occupying claimant the value of the improvements so as aforesaid assessed, within the time allowed by the court, or, if on demand of the value of the land without the improvements, and tender of a deed of the land in question as aforesaid, by the successful claimant, if the occupying claimant shall refuse or neglect to pay the success- Occupying ful claimant the value of the land without the claimant fair improvements so as aforesaid assessed, within ling to pay such reasonable time as the court shall allow, the value of thena writ of possession shall be issued in favor ted. of the successful claimant; but if such successful claimant shall not demand the value of the land in question, without the improvements and tender a deed as aforesaid, and shall refuse to pay the occupying claimant the value of improvements so as aforesaid assess. When occued, within such reasonable time as the court pying claimshall allow, such occupying claimant shall not tinue in posbe evicted from such land, but shall be suffer- session. ed to remain in possession; and in no such case shall the occupying claimant who may be evicted, be liable to any action or presecution for or on account of any rents or profits accruing, or waste or damages done to said land previous to receiving actual notice as aforesaid, of such adverse claim, unless such waste or damages shall exceed the value of the im-

provements so as aforesaid to be assessed,and then only the amount of such excess.

CHAPTER XXVII.

AN ACT against forcible entry and detainer.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That two justices of the peace shall have authority to en-Trial for for- quire by a jury, as is herein after directed. as cible entry & well against those who make unlawful and forcible entry into lands and tenements and with a strong hand detain the same, as against those who having lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such enquiry, that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained with force and strong hands, or that the same, after a lawful entry, are held unlawfully and with force and strong hands, then such justices shall cause the party complaining to have restitution thereof.

> Sec. 2. When complaint shall be formally made in writing to any two justices of the peace, of any unlawful and forcible entry into any lands or tenements and detainer as aforesaid, or of any unlawful and forcible detainer of the same, after a peaceable entry, they shall make out their warrant under their hands and seals, directed to the sheriff or coroner (as the case may be) of the same county, commanding him to cause to come before them, twelve good and lawful jury men of the same county, and they shall be empanneled to enquire into the entry or forcible detainer complained of; which shall be in the form following, to wit :-

State of Indiana, } Sct. ----county,

WHEREAS complaint has been made to the undersigned two justices of the peace for the county aforesaid, by E F, of -in the county form thereof aforesaid, that 6 H, of -, yeoman, on the ----day of----, 181-, at---aforesaid, with force and arms, and with strong hands, did unlawfully and forcibly enter into and upon a tract of land of him the said E F. inaforesaid, containing -acres, bounded as follows, to wit : (or into the messuage or tenement of him the said E F, as the case may be) and him the said E F. with force and strong hands as aforesaid, did expel and unlawfully put out of the possession fthe same: (or if it is a forcible detainer only, then the entry shall be described, and the detainer inserted as follows, to wit : And the said G H, does unlawfully, unjustly and with a strong hand, deforce and still keep out of the possession of the same :) You are therefore commanded in the name and by the authority of the State of Indiana, to cause to come before us, upon the-day of-, 181-, at the hour of-, and at-in the county aforesaid, twelve good and lawful jury-men of your county, to be empanneled and sworn to inquire into the forcible entry and detainer (or for the detainer only, as the case may be) before described. Given under our hands and seals, the-day of-, 181-.

A B, Justices of the Peace.

SEC 3. The said justices shall make out a summons to the party complained against, in the form following, to wit: The State of Indiana.

To the ___of __county, Greeting :-You are hereby commanded to summon G Form of sum H, yeoman of , to appear before the un- defendant. dersigned two justices of the peace, for the

mons to the

Z 26

detainer by jury before 2 J. B.

When a warrant shall be issued.

county of __aforesaid, at the hour of __ou the day of at in the county aforesaid, then and there to answer to-, and defend against the complaint of EF, to us exhibited; wherein he complains that (here recite the complaint,) and make to us a return of this summons, with your proceedings therein, on or before the said day. Given under our hands and seals, the day of 181-A B, Justices of the Peace.

Service there

Which summons shall be served upon the party complained against, or a copy thereof left at his usual place of abode, seven days exclusively before the day appointed by the justices for the trial; and if after the service of such summons, the party does not appear to defend, the justices shall proceed to the enquiry in the same manner as if he were present; and when the jury shall appear, the justices shall lay before them the complaint exhibited, and shall administer the following oath to the foreman and to the other jurors:

Foreman's Oath.

Foreman's oath.

Form of yer-

dict.

You, as foreman of this jury, do solemnly swear (or affirm) that you will well and truly try whether the complaint of E F, against G H, now laid before you, is true, according to the evidence : "So help you GoD."

The Jurors' Oath.

The same oath (or affirmation) that your foreman has taken on his part, you and each of you shall observe and keep on your respective parts: "So help you GoD."

And if the jury find the complaint to be true, they shall return their verdict in the

form following:

AT an inquisition held before A B and C D, Esquires, two justices of the peace for the county of ____, and State of Indiana, at ____ in the county aforesaid, on the day of , 181-, the jury on their eaths, do find that the lands (or tenements) bounded as follows;

(as in the complaint,) on the day of 181-, were in the lawful and rightful possession of the said E F, and that the said G H, did on the same day unlawfully, with force and arms, and strong hands, enter forcibly upon the same : (or being lawfully upon the same, did unlawfully, with force and strong hands, expel and drive out the said & F, and that he still continues wrongfully to detain the possession from him the said EF:)-Whereupon the jury, upon their oath or affirmation) as aforesaid, find that the said E F, ought to have restitution thereof without delay.

SEC. 4. If by accident or challenge, there shall happen not to be a full jury, the sheriff shall fill the pannel with bye standers as in other cases; and if the jury after a full hearing of the cause, shall find the complaint laid before them, supported by evidence, they shall all sign their verdict in the form afore. Jury to sign said; otherwise the defendant shall be allowed his legal costs, and have his execution thereof.

SEC. 5. If the jury shall return their verdict signed by the whole pannel, that the verdict is supported by evidence, the justices shall enter up judgment for the complainant to judgment, & have restitution of the premises, and shall a- award a writ ward their writ of restitution accordingly; of restitution which writ of restitution shall be in the following form :

The State of Indiana,

To the county, Greeting: WHEREAS, at an inquisition of forcible entry and detainer, held before us the undersigned two justices of the peace, for the county of -, in the said state of Indiana, at -- Form of said -in the county aforesaid, on the-day of writ. ----18---, the jurors empanneled and sworn according to law, returned their verdict in writing, signed by each of them, that E F. was on the -day of --- in the right-

fal possession of a certain messuage or tract of land, (as in the verdict returned,) and that &c: (as in the verdict,) Whereupon it was considered by us. justices as aforesaid, that E F a would have restitution of the same. You are therefor commanded, that taking with you the force of the county if necessary, you cause the said G H, to be forthwith removed from the premises, and the said & F, to have the peaceable restitution of the same; and also, that you levy of the goods, chattels or lands of the said G H, the sum of ____, being costs taxed against him on the trial aforesaid, together with --- more for this writ and your own fees; and for want of such goods, chattels or lands of the said G H, by you found, you are commanded to take the body of the said G H, and him commit to the common jail of the said county. there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he be delivered by due course of law; and make return of this writ with your proceedings. Witness our hands and seals at -aforesaid, the day of , 18

A B, Justices of the Peace.

SEC. 6. Every person or persons who shall be aggrieved by any proceedings which may be had under the provisions of this act, shall be entitled to an appeal to the circuit court of the same county, nuder the same restrictions and in the same manner that appeals are taken from the judgment of justices, under the statute respecting the trial of small causes; and the said circuit court shall hear and determine the same agreeably to the true intent and meaning of this statute, and carry the same into final execution; but such judgment shall be no bar to any after action brought by either party.

SEC. 7. This law shall not extend to any person who has had the occupancy, or been in the quiet possession of any lands or tenements Three years for the space of three whole years together possession, a next before, and whose estate therein is not of forcible en determined or ended.

SEC. 8. This act to be in force from and er. after its publication.

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try & detain-

CHAPTER XXVIII

ANACT defining the duties of Recorders, and pointing out the mode of conveying real estate.

APPROVED-January, 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, I hat there shall be an office of record, in each and every county in this state, which shall be called and styled the recorder's office, and shall be kept at some office, where convenient place at the seat of justice, in the respective counties, and the recorder shall duly attend the service of the same, and at the cost and charges of the proper county, shall provide good large books, of royal or other large paper or parchment, well boundand covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this law.

Sec. 2. All deeds to be recorded in pursuance of this law, whereby any estate of inher- What terms' itance in fee simple, shall hereafter be limited shall be to the grantor and his heirs, the words grant, deemed a bargain and sell, shall be adjudged an express conveying an covenant to the grantee, his heirs and assigns, simple. to wit: That the grantor was seized of an indefeasible estate in fee simple, freed from all incumbrance done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment, against

Recorder's to be kept.

the grantor, his heirs and assigns, unless limis ted by express words contained in such deed, and that the grantee, his heirs, executors, administrators and assigns, may, in any action, assign breaches, as if such covenants were expressly inserted. Provided always, that this law shall not extend to leases at back rent, or leases not exceeding one and twenty years when the actual possession goes with the lease.

Penalty for forging or swearing corruptly to deeds transfering real estate.

Sec. 3. If any person shall forge any entry of the acknowledgements, certificates or endorsements, whereby the freehold or inheritance of any man may be changed, he shall be liable to the penalties against forgers of false deeds; and if any person shall perjure himself in any of the cases herein above mentioned, he shall incur the like penalties as if the oath or affirmation had been in any court of record.

Payment of mortgage to be entered on record.

Sec. 4. Every mortgagee of any real or personal estate in this state, having received full satisfaction and payment, of all such sum or sums of money, as are really due to him by such mortgage, shall, at the request of the mortgager, enter satisfaction upon the margin of the record of such mortgage recorded in said office; which shall forever thereafter, discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

Penalty on mortgagee for failing to enter the same.

SEC. 5. And if such mortgagee, by himself or his attorney, shall not, within three months after request and tender made, of his reasonable charges, repair to said office, and there make acknowledgement as aforesaid, he, she or they neglecting so to do, shall, for every such offence, forfeit and pay unto the party or parties so aggrieved, any sum not exceeding the mortgage money, to be recovered in any court of record, by presentment or indictment.

SEC. 6. Before any of the recorders enter

upon the duties of their respective offices, they shall become bound to the Governor and his Recorder to successors in office, with one or more sufficient give bond, securities, in a bond for two thousand dollars, conditioned for the true and faithful discharge of the duties of his office, and for the delivering up of the records and other writings belonging to the said office, whole, safe and undefaced, to his successor in said office; which said respective bonds shall be filed in the Secretary's office, and there safely kept, in order to be made use of for making satisfaction to the parties that shall be damnified or aggrieved, as is or shall be in such cases directed by law.

SEC. 7. No recorder whomsoever, now or hereafter appointed, shall enter upon or offi- Penalty for ciate in his said office, before he hath given failure theres such security as aforesaid, upon the pain of of. forfeiting three hundred dollars, one half to the proper county, and the other half to him or them that shall sue for the same, to be recove-

red as aforesaid.

SEC. 8. All deeds and conveyances which shall be made and executed within this state, of and concerning any lands, tenements or hereditaments therein, or whereby the same of deeds, be; may be in any way affected, in law or equity, fore whom shall be acknowledged by one or more of the made. grantors or bargainers, or proved by one or more of the subscribing witnesses to such deed, before the recorder of the proper county, or one of the judges of the Supreme Court of this state, or before one of the judges of the Circuit Courts of this state, or before one of the justices of the peace of the county, where the land conveyed lies, and shall be recorded in the recorder's office of such county where such lands or hereditaments are lying recorded and being, within twelve months after the ex- within 12 ecution of such deeds of conveyance; and ev- months. ery such deed of conveyance that shall at any time after the publication thereof, be made and

executed, and which shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and void, against any subsequent purchaser or mortgagee, for valuable consideration, unless such deed or conveyance be recorded as aforesaid, before the proving and recording of the deed or conveyance under which such subsequent purchaser or mortgagee shall ciaim.

How deeds shall be proved in case of witnesses.

SEC. 9. Where the grantors and witnesses of any deed or conveyance are deceased, or cannot be had, it shall and may be lawful to and for the judges of the Supreme or Circuit the grantor & Court, or any justice of the peace of the county where the lands lie, to take the examination of any witness or witnesses, on oath or affirmation, to prove the hand writing of such deceased witness or witnesses; or where such proof cannot be had, then to prove the hand writing of the grantor or grantors, which shall be certified by the judge or justice before whom such proof shall be made; and such deed, or conveyance being so proved, shall be recorded as is usual in other cases, directed above by this law.

SEC. 10. Every recorder shall keep a fair book, in which he shall immediately make an entry of every deed or writing, brought into his office for recording, mentioning therein the dale, the parties and the place, where the lands, Recorder to tenements and hereditaments, granted or conhave respect veyed by the said deed or writing, are situate, to priority of dating the same entry on the day on which such deed or writing was brought into his office, and shall record all such deeds and writings, in regular succession, according to their priority or time in being brought into said office, and shall also immediately give a receipt to the person bringing such deed or writing to be recorded, bearing date on the same daywith the entry, and containing the abstract aforesaid, for which entry or receipt he shall take or receive no fee or reward whatever; and if a-

in recording the same.

To give receipt therefor.

ny recorder shall record any deed or writing before another, first brought into his office to be recorded, or in any other manner than is herein before directed, or shall directly or in - Penalty for directly take or receive any fee or reward for neglect of such entry and receipt, or either of them, he duty. shall forfeit and pay, for every such offence, a sum not exceeding three hundred nor less than one hundred dollars; one half to the use of the proper county, and the other half to the use of him or them that may sue for the same, to be recovered in any court of record byaction of debt, bill or plaint, wherein no essoin, wager of law or protection, or more than one imparlance shall be granted.

Sec. 11. Wherever any husband and wife shall hereafter incline to dispose of and con- Husband and vey the estate of the wife, or her right of, in wife to join in or to any lands, tenements or hereditaments oonveying her interest whatsoever, it shall and may be lawful, to and in real estate. for the said husband and wife, the wife not being less than twenty-one years of age, to make, seal, deliver and execute any grant, bargain and sale, lease, release, feoffment, deed, conveyance or assurance, in the law, whatsoever, for the lands tenements and hereditaments, intended to be by them passed and conveyed, and after such execution, to appear before one of the judges of the supreme or circuit courts of this state, or before some justice of the peace in and for said county, or before such recorder himself, who are hereby authorized and required to take such acknowledgements; in doing of which, he or either of them shall examine the wife, separate and apart from her husband, and shall read or oth- part from her erwise make known, the full contents of such husband. deed or conveyance to the said wife; and if, upon such separate examination, she shall declare that she did not voluntarily and of her own free will and accord, and as her act and deed, seal and deliver the said deed or conveyance, without any coercion or compulsion from

Wife to be

A A 27

her husband, every such deed or conveyance shall be and the same is hereby declared to be good and valid in law, to all intents and purposes, as if the said wife had been sole and not covert at the time of such sealing and delivering; any law, usage or custom to the contrary in any wise notwithstanding: Provided, that the judge, justice or recorder taking the same, shall, under his hand and seal, certify the same upon the back of such deed or convevance.

Acknowledements of deeds taken in other counties than those in which the lands lic.

Deeds of

non-residents

how authen-

ticated.

Sec. 12. It shall and may be lawful for any judge of the Supreme or Circuit Courts, or any justice of the peace of any county in this state, to take the acknowledgment or proof of the execution of any deeds or conveyances, or release of dower of any lands or tenements lying in any other county in this state; which acknowledgments or proofs, or release, so taken and made, the same being duly certified by the clerk, under the county seal, shall be valid and effectual, and have the force and effect, as if the same were taken before any judge or justice of the peace of the county in which the said land or tenements are situate.

SEC. 13. All deeds and conveyances, made and executed by any person not residing within this state, and brought hither to be recorded, in the county where the lands lie, the acknowledgments thereof having been taken and made, in manner herein before directed, before any judge or justice of the peace of the proper county, where such deeds or conveyances are or shall be made or executed, and certified under the seal of such county, shall be as valid and effectual in law, as if the same had been made and acknowledged as aforesaid, before any judge of the Supreme Court, or judge of the Circuit Court, or the justice of the peace for the county where the lands lie, any thing herein contained to the contrary notwithstanding; and it is hereby made the duty of each and every recorder of any county in this state

to receive the acknowledgments and proofs of deeds and all other instruments of writing offered for record.

All laws and parts of laws on any of the foregoing subjects, heretofore in force in this state, are hereby repealed. This act to be in. force from and after its publication.

CHAPTER XXIX.

AN ACT establishing the office and defining, the duties of a Notary public.

APPROVED-January, 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That the Governor Notary pubshall appoint and commission so many Nota- lie how apries public in this state as he may deem necessary; who shall hold their office for the term of five years, if they shall so long behave well.

SEC. 2. Each Notary public, when required, shall make all necessary attestations and His duty. Each Notary public, so soon protestations as he shall receive his commission, shall repair to the clerk of the circuit court of his proper county, and shall take an oath, faithfully and impartially to discharge the duties of a Notary public, together with the several oaths prescribed by law; a certificate of which oaths shall be endorsed on the back of his commission by the said clerk.

SEC. 3. It shall be the duty of each Notary To procure a public to procure a seal, which shall be called seal. the seal of the Notary public; and for each attestation or protestation with his certificate and seal annexed, he shall be entitled to demand and receive of the person applying for the same, the sum of one dollar.

His fees.

CHAPTER XXX.

AN ACT for the appointment of County Surveyors and their deputies.

APPROVED-January 28, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana. That a surveyor shall be appointed in each and every county, and commissioned by the Governor. The said surveyors respectively shall reside within the county respectively for which he shall have been appointed, and before entering on the duties of his office, shall take an oath faithfully to discharge the said duties, and give bond to the Governor and his successors, with two sufficient securities, in such sum as the Governor may direct, for the faithful execution of his office.

Surveyor to

the county.

reside within

To give bond

Sec. 2. All deputy surveyors shall be nominated by their principals, who shall be answerable for them.

Sec. 3. The principal surveyor shall appoint a sufficient number of deputies to perform the services of his office. All laws and parts of laws on the subjects herein contained shall be and the same are hereby repealed. This act to take effect and be in force from and after its publication.

CHAPTER XXXI.

AN ACT for the appointment of constables and defining their duties.

APPROVED-January 22, 1818.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That it shall be the duty of each and every board of county commissioners, at their meeting next ensuing the session of the General Assembly of this state, annually in each and every county, C. commis to appoint one or more respectable person or sioners to ap persons in each and every township within the respective counties, to serve as constables, and year. the constables so appointed shall continue in office by virtue of such appointment, for the term of one year, and until their successors shall he appointed and qualified into office: Provided. That nothing herein contained shall oblige them to serve as constables for a longer term than three months after the expiration of the term of one year, as aforesaid.

SEC. 2. Every constable, before he enters upon the duties of his office, shall take the following oath or affirmation, viz: I do solemnly swear or affirm. (as the case may be) that I will faithfully discharge the duties of constable within the county of -- according to the best of my understanding and abilities. Which oath or affirmation, shall be taken before any clerk or judge of the circuit court, or before any justice of the peace of the said county; and the person administering such oath, shall make out a certificate thereof, and cause it to be filed in the office of the clerk of the county.

SEC. 3. It shall be the duty of every constable, previous to taking the oath aforesaid, to execute to the board of county commissioners, a bond with at least two free-holders as Constables to his security, payable to the county treasurer give bond: and his successors in office. in which such constable resides, in the penal sum of five hundred dollars, conditioned for the faithful performance and dischage of the duties of his office as constable; which bond shall be filed by the clerk of the board of county commissioners as aforesaid, for the benefit of each and every person who may sustain injury by reason of the malfeasance or misfeasance of such constable.

Sec. 4. It shall be the duty of every constable to apprehend and bring to justice all

Oath of office

To suppress riots, &c. and to serve process.

felons and disturbers of the peace, to suppress all rios and unlawful assemblies, and in other respects to keep the peace in the county wherein he shall have been appointed, and also to serve and execute all warrants, writs, precepts and other process to him directed, and in all respects to do and perform all things appertaining to the office of constable.

Sec. 5. Each and every constable shall, on the receipt of all and singular process to him directed, note on the same the time of his To endors the receiving such process, and shall endorse the time of the receipt & ser manner in which such process shall have vice of probeen served or executed, with the time and manner of serving and executing the same.

SEC. 6. Whenever a vacancy shall hap-

pen in any township by the death, removal,

resignation or disqualification of any consta-

ble, it shall be lawful, and is hereby made the

duty of the justice of the peace in such town-

ship, to appoint a constable to fill such vacan-

cy until the next meeting of the board of coun-

ty commissioners of the proper county, who

shall confirm such appointment or appoint an-

other; and the constable so appointed, shalk

take the same oath, execute the like bond re-

quired by this act: Provided nevertheless,

That any justice of the peace may appoint any

suitable person to act as constable for a spe-

chattels are about to be removed if delay is

made for the purpose of applying to the regu-

Vacancies how filled.

cess.

In special ca- cial purpose in a criminal case, or in case of ses J. r. may attachments where there is a probability that appoint a con the criminal will escape, or where goods and stable.

of trial.

lar constable of the township. SEC. 7. It shall be the duty of each and every constable to attend before the justice of the peace on the return day of the process to attendondays him directed by such justice, and keep order and decorum, and execute all legal commands of such justice, under a penalty not exceeding five dollars for each neglect, to be assessed by such justice against the constable: Provided, That no fine shall be assessed as aforesaid. if the constable produces satisfactory evidence either by others' or his own oath, that he was prevented by sickness or other unavoidable circumstances.

Sec. 8. If any constable shall collect any money on an execution or otherwise, by virtue of any precept issued by any justice of the peace to him directed, and shall fail to pay vs. constable the same over to the justice issuing such exe- failing to recution or other precept, within six days from turn process and after the return day of such precept, or or to pay o'er shall fail to make return of any precept to him directed, within six days from the return day thereof, it shall be the duty of the justice of the peace issuing such process, to issue a scire facias forthwith to some other constable of the proper township, or if there is no other constable in such township, to any other person he may appoint, who is willing to serve the same, directing him to summon such constable so failing, to appear before him within five days to shew cause, if any he can shew, why judgment should not be entered against him for the amount of the money so received by him, or of the sum he ought to have collected; and if good cause cannot be shewn why he did not pay over the money at the proper time, or make return of the precept to him directed on the proper day, then the justice shall proceed to enter up judgment against such constable for the proper sum, together with the cost of issuing such scire facias, and ten per centum damages for the benefit of the party injured; on which judgment there shall be no stay of execution: Provided however, Nothing herein contained shall be so construed as to prevent the constable from receiving the receipt of any person to whom any mo- Judgment ney is due, which it is made his duty by law creditor's reto collect, in payment of the whole or any ceipt to be ta part of such morey, and delivering the same over to the justice of the peace in payment

ken by J, R.

thereof; and the receipt of the person to whom the money is due, shall be received by the justice of the peace for the amount therein specified.

SEC. 9. It shall be the duty of each and every justice of the peace in this state, to proceed as directed in the foregoing section against every person who, at the time this law shall take effect, is or has been a constable, and shall have failed at the proper time to of the last sec make return of any precept to him directed, or to have paid over to him at the proper time, tion, liable to pay damages. any money by him collected; and any justice failing as herein directed, shall be rendered liable to pay any damages that may accrue to any person in consequence of such failure.

SEC. 10. In the service of process in criminal cases, the limits of a constable is bereby made co extensive with the county in which they are appointed; and in case of the escape The limits in of any person or persons from a criminal process or charged with a criminal offence, such constable may pursue after and take such absconding person or persons in any county in process, and this state; and in the service of subpæras for witnesses they shall be confined to their respective counties; and all constables appointed by and under the authority of this act, shall be ministerial officers of the courts held by justices of the peace of their proper townships.

SEC. 11. The sales of property made by any constable under the authority of this act, shall be made between the hours of ten o'clock A. M. and five P. M. at the house or on the premises where such property was executed, or at one of the most public places within said township; and if the justice who issued the execution or the constable making such sale, shall either purchase directly or indirectey any of the property so sold, such justice or constable so offending, shall forfeit and pay for every such offence, a sum not exceeding twenty dollars nor less than ten dollars, to-

which consta bles in criminal cases may serve may arrest persons escaping.

J. P. failing

to pursue the

requisitions

Time and place of sale.

penalty on J P. or constable for purchasing.

gether with costs of suit, to be recovered by

presentment or indictment, for the use of the seminary for the proper county, and shall moreover be liable to the party aggrieved.

SEC. 12. It shall be the duty of each and every constable within the different counties of this state. when any execution shall come into his hands; on which he shall be compelled to sell any property by him taken by vir- Constable tue of the same, to take bond with sufficient may take security of the defendant, for the delivery of bond for the such property at the time and place where the property seisame shall be advertised for sale, and shall be zed. liable to the creditor or creditors in such execution for the amount of the property so taken, and should such defendant or his securities fail to deliver the property agreeably to the bond as aforesaid, then such constable shall, on motion before any justice of the peace, by giving the party three days previous notice, be entitled to a judgment for the amount of such property; together with reasonable costs and damages, to be adjudged of by the justice; on which judgment there shall be no stay of execution.

Sec. 13. Any person or persons purchasing or bidding off property at constables' sale and failing or refusing to pay therefor, agreeably to the terms of such sale, such person or persons shall be liable to damages not ex- renalty on ceeding half the amount of such purchase or bidders failbid, to be recovered before any justice of the ing to pay the peace; one half of which damages shall go to nev. the use of the constable, and the other half thereof to the party to whom the money arising from such sale would be due and payable. All laws and parts of laws in force previous to the commencement of the present session of the general assembly, concerning the appointment, and regulating the duties and authority of constables, are hereby repealed.

This act to be in force from and after its publication,

CHAPTER XXXII.

AN ACT regulating prisons and prisons bounds.

APPPOVED-January 21 1818.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana. That the several circuit courts within this state, shall lay off and designate by metes and bounds, aprisonbounds round and adjoining each county jail, a certain determinate space of land to be called and termed prison bounds: Provided, That such prison bounds in no instance shall extend in any direction from said jail, more than six hundred yar is; which prison bounds so fixed and assigned, shall be recorded amongst the records of said court, a copy of which shall be delivered to the jailor, to be by him fixed up in some conspicuous place in the debtor's

room, for the government of such of them as

shall be entitled to the benefit of such prison

Imprisoned debtors entitled to prison bounds.

bounds.

the limits of

Sec. 2. Every person imprisoned for debt, either on mesne process or execution, shall be permitted and allowed the privilege and benefit of the prison bounds; but in no instance to pass over or without said limits: Provided. That such prisoner, before he or she shall be entitled to such privileges, shall To give bond. give bond with security, living within the county, to the creditor or creditors, in double the sum for which such prisoner or prisoners stand committed, conditioned that from and after the execution of such bond, he, she or they will continue a true prisoner or prisoners in the custody of the jailor or prison keeper, and within the limits of the said prison bounds, without attempting any manner of escape until discharged by law. And in order to prevent any oppression under pretence of the security being insufficient, two disinterested justices of the peace for said county shall be cal. Bond to be led to approve of the security; and the same being so approved by them, shall be deemed sufficient; and if the creditor or creditors shall refuse to accept and take the bond, the same shall be lodged with the sheriff, to be by him kept until the creditor or creditors shall demand the same; and on putting such bond in suit when the condition shall have been broken, judgment shall be entered up for the amount of damages sustained, and no relief in chancery shall be allowed therein.

SEC. 3. If any action or suit shall be brought or instituted against any sheriff or jailor, for When the of any manner of escape, committed by any pris- ficer for an oner allowed the benefit and privileges of pri- action of esson bounds, having first given bond as is by cape shall this law required, such sheriff or jailor shall plead the gen have the liberty of pleading the general issue

and give this act in evedence. Sec. 4. If any person or persons shall directly or indirectly, by any way or means whatsoever, convey any instrument, tool or other thing whatsoever, to any prisoner, or into any prison, whereby any prisoner might break the prison or work himself or herself unlawfully out of the same, every person so offending, shall forfeit and pay such fine as shall be found by a jury under the direction of cape. the court, not exceeding one thousand dollars, according to the nature of the case for which the prisoner stands charged, and suffer such corporial punishment, not exceeding thirty-nine stripes, as the court may inflict; and if it shall so happen that the prisoner or prisoners shall make his, her or their escape by means of any instrument, tool or other thing so conveyed, the person so conveying the same, shall be liable to pay all such sums of money as the prisoner stood committed for, if on civil process, and shall also have inflicted on him or her, all such punishment as the ascaped prisoner would have been liable to, if

approved by 2 J. P.

penalty for aiding a prisoner to esa criminal, and had been convicted of the charge for which he, she or they have been committed, unless such prisoner would be liable to capital punishment, in which case the person assisting in such escape shall be punished by fine, imprisonment, whipping and pillory, or setting under the gallows with a rope around his or her neck, or any one or more of said punishments as the court, having eognizance thereof, shall think proper to inflict.

penalty for voluntary escape.

gent escape.

the officer retakes escaping debtor withint hree months.

Jailor to furmish a box as a deposit for mapers.

SEC. 5. If any jailor or prison keeper shall voluntarily suffer a prisoner committed unto him to escape, he shall suffer and undergo the like pains, punishments and penalties as the prisoner soescaping should or ought by law to have suffered and undergone for the crime or crimes wherewith he, she or they stood charged, if he, she or they had been convicted thereof. And if any jailor or prison keeper shall through negligence, suffer any prisoner accused of any crime, to escape, he shall pay For a negli- such fine as a jury under the direction of the court shall assess, according to the nature of the offence for which the escaped prisoner stood convicted: Provided nevertheless, That if any person who may be committed for debt, Proviso when shall violently escape from prison without the connivance of the sheriff or keeper, and the sheriff, jailor or prison-keeper shall, within three months next after such escape, recover the prisoner so escaped and re-commit him to prison again, then and in that case the sheriff shall be liable to nothing further than the costs of such action or actions as may have been commenced against him for such escape. Sec. 6. All warrants, mittimuses, writs

and instruments of writing of any kind, or the attested copies of them, by which any prisoner may be committed, enlarged or liberated, shall be safely kept (regularly filed in their order of time) in a suitable box for that purpose, provided by the keeper of the jail, un-

der the direction of the sheriff: and upon the death or removal of any sheriff, the box, with the contents thereof, shall be delivered to his successor in office, under a penalty not exceeding five hundred dollars, to be paid by the sheriff so removed, or his executors or administrators; in case of the death of the sheriff to be recovered by any person who shall prosecute therefor to effect, in any court having jurisdiction to try the same.

Sec. 7. It shall be the duty of the circuit courts, at the beginning of every term, to di- Grand juryto rect the grand jury to enquire into the state enquire into of the prison in their respective county, with the condition regard to the sufficiency of such prison, the of prisons & condition and accommodation of the prisoners, prisoners. and said courts shall, from time to time, take such legal measures as may best tend to secure the prisoners from escape, sickness and infection, and to have the jails cleansed from from filth and vermine.

SEC. 8. The sheriff shall keep separate rooms for the sexes, except where they are Sheriff shall lawfully married, and be responsible that his furnish sepajailor at all times provide proper meat and rate rooms & drink for all prisoners committed to the jail proper food. of his proper county, if such prisoners have no other convenient way of supplying themselves with provisions, which shall always pass to them through the keeper's hands; and in every case where the sheriff or jailor shall be at the expense of furnishing meat, drink or fire wood, to a prisoner in jail, for a crime, or at the suit of the state, who is not of ability in point of property to repay or indemnify such sheriff or jailor their reasonable expence and charges, for supplying such prisoner or prisoners, in every such case, the sheriff or jailor shall make out his account therefor, and on oath shall testify to the truth of the same before any justice of the peace, or judge of the circuit court of the proper county; and on the receipt of such certificate, the commis-

Prisoner's board, by whom paid.

sioners of said county shall audit the same; but in all civil cases, where the defendant is unable to pay the prison fees, the same shall be taxed up by the sheriff against the plaintiffs, which shall be recovered by fee bill, in the same manner as other costs; provided, nothing herein contained shall be so construed as to prevent the prison fees being taxed up in favor of such plaintiff, and made a part of his costs against such defendant or defendants, after he, she or they are liberated from his, her or their confinement.

Appropriation of fines & penalties.

Sec. 9. All fines and penalties, arising from any breach of this act, shall be for the use of county seminaries, and the same remedy shall be had for the recoverythereof, as in other cases where duties are enfoined by statute, & no particular mode of prosecution directed. In case of default it shall be made the duty of the attorney prosecuting for the county, to prosecute for the same, either by writ or indictment, in any court having competent jurisdiction; and the fine or fines when recovered, shall be paid into the county treasury, for the use of the respective county seminaries.

All laws heretofore in force in this state regulating prisons and prison bounds, are hereby repealed. This act to be in force from and after its publication.

CHAPTER XXXIII.

AN ACT for the safe keeping of prisoners, committed, under the authority of the United States, into any of the jails of this state, and for other purposes.

APPROVED-January 26, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That it shall be the duty of the keeper of every jail, in eve-

ry county within this state, to receive into his Jailor to recustody any prisoner or prisoners, who may ceive prisoners be from time to time, committed to his ted under the charge, under the authority of the Uni- authority of ted States, and to safe keep every such the U.S. prisoner or prisoners, according to the warrant or precept of commitment, until he or they shall be discharged by the due course of the laws of the United States.

Sec. 2. The keeper of every jail as aforesaid shall be subject to the same pains and penalties, for every neglect or failure of duty duty. herein, as he would be subject to by the laws of this state, for the like neglect or failure in the case of a prisoner committed under the

authority of the said laws.

Sec. 3. Provided, always, That the United States do pay or cause to be paid for the use and keeping of such jails, at the rate of pals. fifty cents per month for each prisoner that shall under their authority be committed thereto, during the time such prisoner shall be therein confined, and moreover do support such of the said prisoners as shall be committed for offences.

SEC. 4. That the marshal for the court of the United States, within this state, shall have a right to use any county prison, within this ceive prisonstate, for the imprisonment of any one in his ers from the custody, by legal writ or process, in the same marshal of manner as the sheriffs of the respective coun- the districtties have a right to use such prisons, and all jailors and keepers of jails within this state, are hereby directed to receive and keep such prisoners, delivered them by the marshal or his authorised deputy, in the same manner as if the prisoner were delivered him by the sheriff of the county in which his jail is fixed : Provided however, that all charges for keeping and feeding and other incidents, shall be made by such jailor against the marshal, and not against the county.

SEC. 5. And be it further enacted, that

trict Court. where to be holden.

Federal Dis- the judge of the district court for the Indiana District, shall have permission, and is hereby authorised, to hold the sessions of the said court in the court room that is used by the Supreme Court of this state for the same purpose.

CHAPTER XXXIV.

AN ACT to regulate marriages.

APPROVED-January 26, 1818.

When male and fen a e are cons dered marriage able.

Sec. 1. BE it enacted by the General Assimbly of the State of Indiana, That male persons of the age of fourteen years, and female persons of the age of twelve years, and not prohibited by the laws of God, may be joined in marriage.

Marriages by whom solemnized.

Sec. 2. Ministers of the Gospel, residing in this state, regularly ordained to preach, as long as they continue to be members of their respective religious societies, justices of the peace in their respective townships, and the society of Friends, commonly called Quakers in their public meetings, according to the rules of their society, are hereby authorized to join together as husband and wife, all who may apply to them, according to the rules herein after prescribed.

licence and keep a record thereof.

Sec. 3. Previously to persons being joined in marriage, they shall produce a licence from the clerk of the circuit court of the county where the parties or one of the parties usually resides, directed to any person empowered by law to solemnize marriages, authorizing him to join together the persons therein named as husband and wife; and every clerk shall keep a record of marriage licences, issued by him, in a book to be used for that purpose.

Sec. 4. Male minors, under the age of twenty one years, and female minors under the age of eighteen years, shall not be joined When conin marriage without the consent of their pa- sent of parrents or guardians, if such parents or guar ry to obtain a dians live within this state; and if any clerk licence. of the circuit court shall grant a marriage licence to such minor, without the consent of his or her parents or guardians, (if he or she have any living within this state,) either verbally given, or from under his, her or their hands, attested by a credible witness, who shall make oath before such clerk that he heard such parents or guardians give their consent to such marriage, and saw them subscribe their names to such instruments of writing, purporting to be their written consent, he shall for every such offence be subject to pay to renalty for such parents or guardians, the sum of five granting a hundred dollars, with costs of suit, to be re- out the same, covered by an action of debt, before any court having jurisdiction thereof; and any indemnifying bond, given to any clerk to keep him secure from damages for granting a marriage licence, shall be null and void.

Sec. 5. If any clerk shall grant a marriage licence to any persons, except one of the parties usually reside in his county, he shall be licence to fined in any sum not exceeding five hundred non-residents dollars, together with costs of suit, to be recovered before any court having jurisdiction thereof, by presentment or indictment.

Sec. 6. Every person who shall solemnize a marriage by virtue of this act, shall, within marriage, three months thereafter, file a certificate there- when and of in the clerk's office of the county where where to be such marriage took place, to be recorded by filed. such clerk, in a book to be kept for that purpose; which record shall be an evidence of such marriage.

SEC. 7. In all cases where the clerk is unacquainted with either of the parties, or proceedings doubts of their being of lawful age, or whe when the

ther either of them lives in the county, the af- the ages of fidavit of any credible person, subscribed and the parties,

Certificate of

Cc 29

sworn to before such clerk, which oath he is nuthorised to administer, setting forth that such person, making such affidavitis acquainted with the parties, and that one of them does usually reside in the county, and that he does verily believe they are of lawful age, and that he knows of no lawful reason why they should not be married, shall be sufficient acquittal to him for granting such licence.

genalty for violating the provisions of this act.

Sec. 8. If any person, contrary to the provisions of this act, knowingly solemnizes a marriage, such person shall, on conviction thereof before the circuit court, by presentment or indictment, be rendered incapable of solemnizing marriages thereafter, and moreover be liable to pay the costs of suit; and if any person, having solemnized a marriage, shall fail or neglect to file a certificate thereof, as before directed, he shall be subject to pay fifty dollars for every month he shallcontinue to fail or neglect to file such certificate. to be collected by presentment or indictment, before any court having jurisdiction thereof, with costs of suit.

penalty on person solemnizing marriages who are not authorized

Sec. 9. If any person, not authorized by the provisions of this act, shall solemnize or attempt to solemnize marriages, he shall, on conviction thereof, before the circuit court, be deemed guilty of usurpation, and be punished accordingly.

Sec. 10. All laws now in force in this state regulating the solemnization of marriages are hereby repealed. This act to take effect. from and after the first day of June next.

'CHAPTER XXXV.

AN ACT regulating divorces.

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APPROVED-January 26, 1818.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That the sereral Circuit Courts within this state, shall be Causes for and are hereby invested, with power and jurisdiction, to decree divorces in the manner divorces: hereinafter mentioned, for the following causes, namely: Where either of the parties had a former husband or wife, at the time of solemnizing the second marriage, for impotency, adultery. In favor of a husband : where his wife shall have voluntarily left his bed and beard, with the intention of abandonment, for the space of two years, or where she shall have abandoned him, and lived in adultery with another man or men, or shall have been condemned for a felony, in any court of record within the United States, or any of the territories thereof. In favor of a wife: where her busband shall have left her with the intention of abandonment for the space of two years, or where he shall have abandoned her and lived in adultery with another woman or women, or shall have been condemned for a felony, in any court of record within the United States, or any of the territories thereof, or where his treatment to her is extremely harbarous and inhuman.

SEC. 2. That the party desirous of obtaining a divorce, may apply to the Circuit Court Complainant for the county in which such complainant re- to file a libel sides, by a libel or petition, specially setting forth the cause of his or her complaint; whereupon the court shall order the defendant to be summoned to appear at the succeeding term of the said court, to answer the libel or petition; which summons shall be served on Notice to the the defendant, together with an attested copy defendant, of the said libel or petition, at least fourteen how given, days before the court to which the summons is made returnable; and if it shall appear by the return of the officer on the summons, or at any stage of the cause, by disinterested affidavit, that the defendant is not a resident of this state, the court shall order notice of the pendency of such complaint, and that the de-

C. may grant

fendant appear upon the first day of the next court, to answer the said complaint, or the matters and things will be decreed against him, in his absence, to be published in some newspaper of this state, for four weeks successively; and the court is hereby invested with all powers necessary to the conducting and finally determining such cases, according to the true intent and meaning of this act. Sec. 3. That upon the appearance of the

defendant, he or she in answer, without oath,

may, by general denial, controvert the allega-

tions of the libel or petition, and may also al-

ledge any of the aforesaid causes of divorce,

to apply to the complainant, or if the defend-

ant fail to appear the cause shall be set down

for trial, but the allegations shall not be con-

sidered as confessed nor proof dispensed with;

Provided, it shall be the duty of the prosecu-

ting attorney. in each and every county with-

in this state, to attend to and oppose all ap-

plications for divorces, under this act, and the

court, in making the allowance at each term to such attorney, shall take into consideration

Sec. 4. That if, on hearing the allegations, there shall appear to be just cause for divorce,

within the provisions of this act, according to

ant divorced from his or her husband or wife;

but such decree shall not operate so as to re-

lease the offending party, who shall neverthe-

less remain subject to all the pains and penal-

ties which the law prescribes against a mar-

Defendant's answer.

Prosecuting attorney to

oppose applications for divorces.

such services.

The offending party not the sound construction thereof, the court shall released from pronounce a decree, declaring the complainmatrimony.

Distribution of property, how made.

riage while a former husband or wife is living. SEC. 5. The courts respectively pronouncing the decree of divorce, shall regulate and order the division of the estate real and personal, in such way as to them shall seem just and right, having due regard to each party, and the children, if any : Provided however, that

nothing herein contained, shall be so construed to authorize the court to compel either of the parties to divest himself or herself of the title to real property.

SEC. 6. Pending a suit for a divorce, the court may make such temporary orders rela. Order of c. c: tive to the property and parties as they shall property pen deem equitable; and whenever the court thinks ding a suite proper, they may compel the husband to disclose on oath, what personal estate he has received in right of his wife, how the same has been disposed of, and what proportion of it remained in his hands at the time of the diyorce; and shall also make use of such kind of process to carry their judgments into effect as to them shall seem expedient

EC. 7. All laws and parts of laws heretofore in force within this state, relative to divorces, shall be, and the same are hereby repealed. This act to be in force from and after

its publication.

CHAPTER XXXVI.

AN ACT providing for the support of illegitimate children.

APPROVED-January, 22, 1818.

SEC. 1. Bill it enacted by the General Assembly of the State of Indiana, That on complaint made to any justice of the peace in this warrant on state, by any unmarried woman resident there- complaint. in, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which if born, also may be a bastard, accusing any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff or one of the constables of his county, commanding him forthwith to bring such accused person before such justice, to

J, P. and the accused may interrogate nant.

ting.

indemnifying bond to the overseers of the poor.

Overseers of the poor may prosecute the reputed father.

answer to such complaint; and on return of such warrant, the justice in the presence of such accused person, (if such accused person can be taken by the proper officer, if not, then in his absence,) shall proceed to examine the complainant on oath, respecting her cause of complaint, and such accused person shall be allowed to ask by himself or his counsel, such the complair complainant under her oath or affirmation, (as the case may be,) any reasonable question necessary to his justification, and such answers and questions, with every other part of examination the examination shall be reduced to writing by to be in wri- the justice, and if on such examination, such accused person shall satisfactorily appear to be the father of the child so begotten, he shall pay or cause to be paid to the woman complaining, such sum or sums of money or other property as she may agree to receive in full satisfaction; and shall further enter into bond with the overseers of the poor of the township in which such woman shall reside, and their successors in office, conditioned to save such county free from all charges towards the maintenance of said child; and in case such person shall so comply with the requisitions of this act, then the justice shall discharge such person, on his paying the costs of prosecution. SEC. 2. When any woman has a bastard,

and neglects to bring suit for the maintenance of such child, or commences a suit and fails to prosecute to final judgment, the overseers of the poor in any township interested in the support of any such bastard child, when sufficient security is not offered to save the county from expense, shall bring forward a suit in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child.

SEC. 3. In case such accused person do not comply with the provisions of the first section contained in this act, the justice to whom such complaint was made, shall bind such

person in a recognizance to the next circuit When the ac court with sufficient security, in a sum not cused shall be recogniless than one hundred dollars, nor more than zed or comfive hundred dollars, to answer such accusa- mitted to jails tion, and to abide the order of said court thereon; and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer to such complaint.

SEC. 4. If it shall happen at the time of holding such court, that the woman be unable to attend, the court shall order the renewal of unable to atthe bonds of recognizance, that the accused tend the C. person shall be forthcoming at the next court, C. a continat which the mother of said child shall be a uance may be ble to attend; and the continuance of said bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

Sec. 5. Whenever such accused person shall plead not guilty to such charge, before Plea of not the court to which he is recognized, the court shall order the issue to be tried by a jury, and ry. at the trial of such issue, the examination before such justice shall be given in evidence; and the mother of such bastard shall be admitted as a competent witness, and her credibility a competent left with the jury: Provided always, That no witness. woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would disqualify her from being a witness in any other case. On the trial of the issue, the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also, any variation in her testimony before the justice and that before the jury, and also, any other confession of her at any time, which does not agree with her testimony, or any other plea or proofs made on behalf of such accused person.

SEC. 6. In case the jury find the defend-

If the com-

tried by a ju-

Complainant

the same are hereby made assignable by en-

dorsement thereon, under the hand or hands

of such person or persons, body politic or cor-

On a verdict of guilty, the accused to for the maintenance of such child. and liable to the complainant for dam ages.

ant guilty, or such accused person before the trial, shall confess in court that the accusation is true, he shall be judged the reputed father give security of such child, and shall stand charged with the maintenance thereof, in such sum or sums as the court shall order and direct, with payment of costs of prosecution; and moreover be liable to the suit of the complainant for damages; and the court shall require the reputed father to give security to perform the aforesaid order, and in case the reputed father shall refuse or neglect to give security as aforesaid. and pay the costs of prosecution, he shall be committed to the jail of the proper county, there to remain antil he shall comply with the order of the court, or until such court shall, on sufficient cause shewn, direct him to be discharged.

This act shall commence and be in force from and after the publicaton hereof.

CHAPTER XXXVII.

AN ACT making promissory notes, bonds and inland bills of exchange negotiable and assignable.

APPROVED-January 29, 1818.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That all notes. bills, bonds or other instruments of writing that shall hereafter be made, or have heretofore been made and signed by any person or persons, body politic or corporate, whereby such person or persons, body politic or corporate What notes, promise to pay any sum of money, or acknowledge any sum of money to be due to a. bills, bonds, ny other person or persons, or for the delivery or payment of any specific article, or to convey any property, or perform any condition or conditions therein mentioned, shall be, and

porate, to whom the same shall have or may be made due or payable, and in his, her or their assignee or assignees, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively; and such assignee or assignees may bring suit thereon in his, her or their own name or names, and recover against the person or per- his own name sons, body politic or corporate, who have or shall make or sign the same, reserving to such drawer or drawers, obligor or obligors, all the equitable defence which he, she or they might or could make, and in the same manner as if the suit had been commenced by and in the name or names of the drawee or drawees, obligee or obligees; and such assignee or assignees may have their action or suit against him, Action vs. her or them, who endorsed the same; (having endorser. used due diligence to obtain the money, article, property or condition from the maker or drawer thereof,) and in every such case he. she or they so bringing suit, shall be entitled to recover damages and costs, if judgment be rendered in his, her or their favor : Provided however, That all such assignee or assignees Assignee to shall allow all just set-offs, discounts and de. allow set off fence, not only against himself, but against the assignor, before notice of such assignment shall have been given to the defendant: Provided also, That all notes in writing negotiable and payable at any chartered bank within this state, made and assigned by any person or persons, body politic or corporate, whereby any such person or persons, body politic Notes payaor corporate, doth or shall promise to ble at a charpay to any other person or persons, body tered bank politic or corporate, his, her or their or- like manner der, or unto bearer, any sum of money therein as inland bills mentioned, shall by virtue thereof, be taken of exchange. and construed to be due and payable as there-

Assignee may sue in

before notice

&c. are assignable.

Dn 30

in expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchancs; and that the payees or endorsees of every such note, payable to them or their order, shall and may maintain their action for such som of money against the makers and endersers of the same respectively, in like manner as in cases of inland bills of exchange; And provided also, That nothing in this preceding proviso shall be so construed as to effect any promissory note, or other writing, un. less the same shall be made negotiable and payable in the first instance, at some chartered bank in this state.

CHAPTER XXXVIII.

AN ACT concerning joint rights and obligations.

APPROVED-December 30, 1817

WHEREAS much inconvenience and hardship has arisen to numerous citizens of this state. growing out of a principle of the Common Law of England, and adopted by this state, securing to the survivor or survivors of two or more joint tenants the part or parts of those deceased, to the preference and entire exclusion of the real and personal representatives of the deceased joint tenant: For remedy whereof.

Sec. 1. B. it enacted by the General Asshmbly of the State of Indiana, That all manner of estate or estates, either real or personal, legal or equitable, or thing possessed or holden by two or more in joint tenancy, the parts of those who may first die shall not accrue to the survivor or survivors, but shall demade estates scend or pass by devise, and shall be subject to debts, charges, curtesy or dower, or trans. missible to executors or administrators, and be considered to every other intent and purpose,

in the same manner as if such deceased joint tenant had been tenant in common.

SEC. 2. That the representative or representatives of one jointly bound with another Representafor the payment of debt or for performance tive of joint or forbearance of any act. or for any other obligor to thing, and dying in the life time of the latter, perform his joint conmay be charged by virtue of such obligation, tracta. in the same manner as such representatives might have been charged, if the obligors had been bound severally as well as jointly.

SEC. 3. This act to take effect from and afthe publication of the same.

CHAPTER XXX X.

AN ACT regulating the interest of money in the state of Indiana.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That creditors, (excepting as hereinafter excepted) shall On what be allowed to receive interest at the rate of debts interest six per centum per annum, for all monies af- shall be paid. ter they become due, on bond, bill, promissory note, or other instrument of writing, or any judgment recovered in any court of record now or hereafter to be established within this state, from the day of signing judgment, until effects be sold, or satisfaction of judgment be made; likewise on money lent or money for the forbearance of payment whereof an express promise has been made, for the payment of interest on money due on the settlement of accounts, from the day of liquidating accounts between the parties and ascertaining the balance, on money received to the use of another and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay of payment.

Sec. 2. No person or persons shall, on any

in common.

Proviso.

Rate per centum.

contract which shall be made, directly or indirectly, take for the loan or use of money or other commodity, above the value of six dollars for the forbearance of one hundred dollars or the value thereof for one year, and so proportionably for any greater or less sums; any law, usage or custom to the contrary notwithstanding.

Proceedings when a suit is commence ed on a usurious contract.

Sec. 3. If any person shall, directly or indirectly, receive any money, obligation, promise or other commodity, by way of premium, or any other name by which the same may be called or understood, to the end of obtaining any higher rate of interest than six per centum per annum, for the loan or use of money or any other commodity, or any contract which hath been made, after the fifteenth of Novema ber, one thousand seven hundred and ninetynine, or shall hereafter be made, and shall institute an action in law for the recovery of the money due on or by reason of the breach of such contract so as aforesaid made, it shall be lawful for the defendant in such action in pleading, to set forth the special matter in bar of so much of the real sum of money or price of the commodity actually lent, advanced or sold, as shall be the amount of the aforesaid premium or sum actually received; and if the plea of the defendant is confessed or adjudged good on demurrer, or supported by the verdict of a jury, then, and in every such case, the plaintiff shall recover no more than what remains of the aforesaid sum of money or price of the commodity actually lent, advanced or sold, after deducting the said premium, without even any interest on the principal, and if a residue is still left the plaintiff may enter judgment for the same and have execution therefor, with interest and costs accruing from the signing of the judgment : Provided always, that if the premium or usurious interest and costs exceed the principal or real sum of money, or the price of the commodity actually

lent, advanced or sold, the excess shall be deemed a debt of record, and on motion of the defendant made in open court, such defendant may enter judgment for the same, with costs, at the next or any subsequent term with: in one year, and have execution accordingly.

CHAPTER XL.

AN ACT regulating the fees of the several officers and persons therein named.

APPROVED - January 21 1818.

SEC. 1. No officer shall exact or demand for services hereafter to be performed any larger or other fee than is hereinafter provided.

Clerks' fees in the Supreme Court.

Control of the Contro		
Every writ of error and seal,	200 75	
Every summons thereon,	50	Clerk's fees
Endorsing on writ of error that is		in the S. C.
to operate as a supersedeas,	8	
Endorsing same on summons,	6	
A bond given by the plaintiff when	au milit	
not a freeholder and resident of		
the state.	371.2	
	9/1-2	
Filing writ and each paper in a	P	
cause, which among the second	6	
Copy of a record or other papers		
per sheet of 100 words,	183.4	
Discontinuance or retraxit,	121.2	Chita from a
Copyof every rule when required,	121-2	min of D O
Bringing a particular record into		
court	25	
Entering satisfaction of records,	121.2	
Receiving and entering verdict,	121.2	
Entering judgment,	15	
An execution,	50	
Entering defendant's appearance,	6	
Entering on docket,	121-5	

	Subpæna for four witness or un-	
Ser Ser	der,	50
	Swearing each witness,	6
	Swearing each constable.	6
	Making up and entering a com-	an fuels
	plete record after judgment, per	
	sheet of 100 words,	183-4
	Searching the record within one	
	year,	121-8
	Every year back,	6
	On confession of errors, judgment	
	or default,	25
	Continuing each cause,	20
	Every issue joined,	25
	Issuing commission to take depo-	
	sitions	50
	Entering any principal motion,	10
	Every writ of supersedeas or cer-	rios seit
	tiorari and seal,	75
	For a bond on a supersedeas,	75
	Certificate and seal,	50
	Making cost bill,	37 1-2
C. Samuelle	Copy of do.	25
Control of the Control	Making out advertisement for non-	
	resident defendant in error,	50
	Issuing an attachment for con-	10.01
	tempt	50
	Every writ of eligit, venditioni,	DECEMBER 1
	exponas and other special writs,	
	not provided for,	50
	Clerk's fees in the Circuit Court in	annil.
	causes.	Cecen
		Charles of the
Clk's. fees of	Every writ of capias and seal,	50
C. C. in crim-	Entering action,	6
nal causes.	Filing writ,	6
	A bond given by the plaintiff when	
	not a freeholder and resident of	
	the state,	18 3.4
	Filing declaration or other plead-	-
	ings,	6
	Copy of declaration or other	
	pleadings when required, for	

· · · · · · · · · · · · · · · · · · ·	Windson III
each sheet of 100 words,	121-2
Discontinuance or retraxit,	121.2
Altering a declaration in eject-	Lui mater
ment and admitting defendant,	C Toppe
	25
Entering any motion and rule	mboining.
thereon, thing a no bound to allo	121-2
Copy of every rule when requir-	a more direct
ed -	121-2
Bringing a particular record into	ultudistes on
court,	25
Entering satisfaction of record,	121-2
	12 1-8
Receiving and entering verdict,	
Entering judgment,	10 10
Reading and allowing every writ	in adda.
of habeas corpus or certiorari,	entrop
and the return,	25
An execution,	50
Transcript of the record in error,	
on an appeal, and returning it	
with the writ, per sheet of 100	TO TIES
	12 1-2
words,	A LA CARDINATE AND LA CARDON
Entering defendant's appearance	6
Every writ of enquiry per sheet of	n manib
one hundred words,	12 1-2
Entering on docket -	12 1-2
Receiving and entering the trav-	
erse pannel and swearing the	
jury, -	37 1-2
A habeas corporata juratorem,	50
Subpæna for four witnesses or un-	
der,	50
	00
All other writs not herein provi-	50
ded for,	50
Swearing each witness, -	6
Swearing constable, -	6
Filing each document not other-	in data
wise provided for,	6
Making up and entering a com-	
plete record after judgment, per	
sheet of 100 words.	121-2
Copy of a record when required,	
per sheet of 100 words,	121-2
	1
Searching the record within one	

TOWN TO THE PERSON OF THE PERS	
year,	121-2
For every year back, -	6
Entering report of referees, per	
sheet of 100 words,	121-2
On confession of judgment, default	Hat Applied
joinder or demurrer,	25
Entering rule of court on appoint-	theciton
ing referees,	48
	15
Continuing each cause,	20
On surrendering the principal in	44.50
court by sureties,	15
On entering each principal motion,	10
Every issue joined,	25
On drawing special list of jury	FREEDINGS.
attending, striking and making	
copies of jury list for plaintiff or	indical in
defendant,	50
Making out advertisement for a	largaze ind.
non-resident defendant in chan-	distributed E
cery or on libel for a divorce,	1 00
Issuing commissions to take de-	1 00
positions,	50
	30
For a marriage licence and recor-	4.00
ding a certificate of marriage,	1 00
Making cost bill,	37 1-2
Copy of do.	25
Recording certificate of an estray	THE PERSON IN
and advertising same on court-	
house door,	50
Every writ of ad quod damnum.	1 00
Sealing weights and measures,	Trimble (in)
each,	121-2
Each writ of subpæna in chance-	
cery and writ of injunction,	50
Copy of writ of subpæna,	50
Issuing an attachment for contempt	mineral a
under the seal of the court,	50
Every writ of elegit, venditioniex-	27.38171
ponas, and other special writs	anidate.
	50
not provided for,	50
For recording certificate of mar-	
riage when no licence has been	**
granted, -	50

Summons in lieu of a capias,	50
Granting certificate of wolf scalps,	25
Tavern licence and bond,	1 00
	Jim ma
Clerks' fees in criminal proce	earngs.
Taking a recognizance and draw-	Manual Cold Cold Cold Cold Cold Cold Cold Col
ing it up in form,	\$ 0 37 1-2 Clark's food
For engrossing every indictment,	Clerk's fees in criminal
filing and reading the same.	56 proceedings.
Subpæna for four witnesses or un-	the strength of the
der,	50
A venire or other writ,	50
Entering defendant's appearance,	6
An execution,	50
Making up record, persheet of 72	
	18 3-4
words, Copy of record when required,	
per sheet of 72 words,	12 1-2
Every order or rule of court,	9
Tentaring a Ma programi	18 1-3
Entering nolle prosequi,	12 1-2
Filing record,	
Entering the pannel and swearing	25
the jury.	
Swearing each witness and con-	6
stable, -	
Reading each order, summons of	6
petition in court,	12 1-2
Taking and entering verdict,	15
Entering the verdict and fine,	
Entering the defendant's confes-	15
Sion,	
Copies of indictment & pleading	. 12 1-2
if required, per sheet of 72 words	10
Discharging a recognizance,	
For examining every account in	. 10
court,	
On entering writ of error or certio	12
rari from the supreme court,	25
Every trial,	20
Continuing each cause,	50
Certificate and seal,	
Reading and entering each order	, 10
STATE OF THE PERSON AND THE PERSON A	

Making cost bill,	3	3~	37 1
Copy of do.		The same and	25

The judges of the circuit court shall allow to the clerk of the said court, for extra services in criminal cases, any sum not exceeding fifty dollars per annum, to be paid out of the county treasury.

Probate Fees.

Probate fees.

route rees.	
For all copies, per sheet of 100	
words,	80121.8
For administering an oath,	6
For filing,	
For a citation,	12
For letters of administration,	50
For taking and filing a renuncia-	1 00
tion, and taking proof thereof,	
For proving a will, endorsing a	50
certificate thereon records	
certificate thereon, recording the same and filing it,	
For qualifying admit	1 00
For qualifying administrator, ta-	
king bond and writing certificate,	1 00
For filing caveat,	121-8
For proving codicil, if proved sep-	
arately, endorsing certificate, re-	
corumg the same and filing it	1 00
For recording and examining an	
inventory or account, per sheet	
of fou words,	12 1-2
For granting the administration	1-10
with the will appeared.	1 00
For settlement of accounts of ex-	1.00
ecutor or administrator,	50
For every copy of said account not	30
exceeding one hundred items,	
with the certificate and seal,	4.00
Reading and filing petition to sell	1 00
land, and swearing administra-	
tor to the truth of the statement	
made and entering the	
made, and entering the necessa-	
ry orders thereon, per sheet of 100 words,	
	12 1.2
Giving notice by order of the	

court for sale of land, for every		
advertisement not exceeding		
three,	25	
For entering up an order for ap-		
praisers of decedents estates,	25	
Sheriffs' Fees.		
Buerly's rees.		
For serving a writ and taking in-		
to custody,	\$ 0 50	Sheriffs
For every mile in going to serve		fiees
process,	6	
For taking bail,	25	
For taking a recognizance and		
drawing it up in form, -	37	1-2_
For returning every writ,	10	
For summoning a jury,	75	
For attending a review per day,	1 00	
For going to and returning from do.	1 00	
For serving and returning a scire		
facias,	37	1-2
For serving a writ of possession		
with the aid of the posse comitatus	2 50	
For serving such writ without the	THE REAL PROPERTY.	
aid of the posse comitatus,	1 25	SU EST DE L'ON
For calling a jury in each cause,	12	1.2
For every person committed to the	A 4 2017	
common jail,	0	1-2
For calling every witness, -	. 6	
For discharging every person out		
of the common jail,	37	1-2
For holding an inquisition, draw-		
ing up and returning the same,	1 50	
For discharging every person by		
proclamation,	10	
For serving a summons,	37	1-2
For attending a prisoner before a		
judge when surrendered by his		
bail, and receiving the prisoner	50	* 3 3 5 5 7
into custody,	50	
For dieting a prisoner per day		1-4
For selling property on an execu	Great of	200
mission of five per centum on the	hove the	ota,
and two per centum on all sums a	those in	at any

	(~11)
	mount; but when the money is paid without seizure, or when the lands or goods seized are not sold, one half only of those commissions shall be allowed; and no other fee or reward shall be allowed upon an execution, except for the expense of receiving and keeping the property. For making a deed on sale of real
	estate on execution, - \$200
	In heu of all fees chargeable to the
	county, and to be paid out of the
	exceeding - 50 00
	Serving a foreign or domestic at-
	tachment, - 50
	Returning do 25
	In criminal cases not provided for, the like
	fees as for services in civil causes.
	Jurors' Fees.
	Every juror sworn in each action in the Supreme or Circuit courts, \$0 37 1-2
	Every juror attending a view per
	day, 1 - 50
	Every juror attending before a jus-
	tice for trial, 26
	For every grand juror sworn per
	day, to be paid out of the county treasury,
	Or a credit of one day's labor on public roads
	and highways in their respective townships,
	at the election of such juror.
	Witnesses' fees in the Supreme and Circuit
	Courts.
	To every witness attending in his
	own county on trial, per day, \$ 0.50
	To every witness attending from
3	another county and going and
	To each witness sub-conding the
	To each witness subpænæd in the county and detained from ano-
	ther county,100
	1 00

Jurors' fees,

Witnesses'

fees in the S. and C. courts

To a clerk of a court attending from another county with wills, records and other evidence, on subpæna, and for going and returning, each day,

2 00

Witnesses' fees before a Justice.

Attending per day, -

8 0 25

Prosecuting Attorney's fees.

For every conviction upon an indictment or presentment,

\$ 5 00

Coroner's fees.

Empannelling and swearing jury and witnesses, and making and returning inquisition for the view of each body, - \$ 500

The fees of the inquest to be certified by the coroner and paid out of the county treasury. For all duties he shall perform when acting as sheriff the same fees as are allowed to sheriffs in similar cases.

Recorder's fees.

For recording a deed or mortgage, \$ 1 00 50 Recording a bond, Recorders Recording a promissory note, 25 fees. Recording all other instruments 12 1-2 per sheet, of 100 words, Copies of all records and certifying the same per sheet of 100 12 1-3 words. Recording town plats and additions thereto, for every 100 lots 2 00 and under. Every lot over one hundred each,

Fees of the Secretary of State.

For copies of records and papers per sheet of 100 words, - 3 18 3-4

Forevery	certificate and	seal,
	7017 . 0	

Pilot fees.

For	each	boat	he	pilots	through			
th	e falls	s of (Obi	0.		S	2	00

Attornies and Counsellors fees in the Circuit Courts.

In all civil actions at law where	
the title of land does not come	
in question, to be taxed with	
the costs in favor of the party	magnitur.
gaining the suit,	8 2 50
In all civil actions where the title	
of land shall come in question in	
suits in chancery, to be taxed	
with the costs in favor of the	
party gaining the suit,	\$ 5 00

Attornies and Counsellors fees in the Suppreme court.

For every appearance to a cause on appeal or writ of error, to be taxed with the costs in favor of the party gaining the suit, \$10.00

Surveyors' fees.

7	
Surveyors	
trai veyors	
fees.	

. de	
For going to and returning from a	
view per day, and for every 30	
miles going to and returning	
from the same,	81 25
For his actual service on the view	
per day,	1 50
For going to, attending the court,	
and returning, per day,	1 25
For every survey by him plainly	A 100
bounded as the law directs, and	
for a plat of such survey, after	
the delivery of such plat, where	
the survey shall not exceed four	
hundred acres of land,	3 00

For every 100 hundred acres of	grit com
land, contained in one survey, a-	
bove four hundred acres,	26
For surveying a lot in town,	1 00
For every additional lot survey-	
ed at the same time, -	25
For a survey began by him, which	
he is stopped or hindered from fin-	
ishing, to be paid by the party re-	
quiring the survey,	2 62
For running a dividing line one mile	
or under,	1 25
For surveying an acre of land for a	
mill -	4 50
73 61 76 1	21 20 2 1 13

For every survey of land formerly patented, and which shall be required to be surveyed, and for a plat thereof delivered as aforesaid, the same fee as for land not before surveyed, and where a survey shall be made of any lands which are to be added to other lands in an inclusive patent, the surveyor shall not be paid a second fee for the land first surveyed, but shall only receive what the survey of the additional land shall amount to.

And where any surveys shall have been actully made of several parcels of land adjoining, and several plats delivered, if the party shall desire one inclusive plat thereof, the surveyor shall make out such for 1 50 For running a dividing line between any county or township, to be paid by such county or township in proportion to the number of taxable inhabitants, if ten miles or under, 10 50 And for every mile above ten, 30 For receiving a warrant of survey and giving a receipt therefor, 17 For a copy of a plat of land, or a certificate of survey,

For every investigation of a criminal information on oath. \$ 00 50

614 Bees of L. P. Swearing each witness, For every warrant or other process 25 in a criminal case, Every bond or recognizance 25 Every precept for forcible entry and 25 detainer, Every trial for forcible entry and 2 50 detainer. Writing & signing every attachment, 25 Taking and certifying acknowledgment of a deed or power of attor-25 ney, 25 Order for relieving a pauper, 50 Order for removing a pauper, 25 Issuing a scire facias, Certifying description of a boat a-25 drift or estray, Warrant and certificate of appraise-25 ment, Publishing bands of matrimony, 50 Solemnizing bands of matrimony, 1 00 Taking and certifying depositions, 25 And for each hundred words therein 121.2 contained, more than 100, For each process required by law in civil cases and not be-12 1-2 fore enumerated, For every writing or record not herein provided for, every hundred words, 12 1-2 Every trial and entry of judg-25 ment, Entering judgment by default or confession, 121-2 For certified copies of all proceedings, for each hundred 12 1-2 words. Entering each rule of refer-121-2 ence or continuance, Every bond or recognizance of 25

bail.

Constables' fees in civil cases.	
For serving a summens or warrant	Constables*
on each person named therein, \$ 0.25	ees in civil
	cases.
When two or more are named in such pro-	
cess, milage shall be allowed to the place of	
actual service the most remote from the place	
where such process is returnable.	
A copy of the process left at the	
defendant's residence 121.2	
Serving a subporna, for each person	
named therein, - 121-9	
Returning each summons, warrant	
and scire facias, - 5	
Bail bond, 25	
Serving execution, and milage as a-	Color Charles C
bove, 25	
Commitment to prison, - 25	
Sale of goods, when the amount	
does not exceed six dollars, 25	
On all sums above six dollars, 5 per centum,	
On all monies collected on execution without	
sale, half the above commissions.	
Returning the same, 10	
atourning the same,	
Constables' fees in criminal cases.	
For serving a capias on each per-	
son named therein, \$050	"Constables"
Serving a subpœna, 20	fees in crim-
Travelling to serve process, per	inal cases
mile 4	
Attending an examination of a per-	
son or persons charged with a	
crime, 20	
If more than one, an addition for	
each, - 5	
Commitment of each person, 25	
SEC. 2. To the end, that all persons char-	
geable with any of the fees aforesaid, due to	
the several officers (except the pilot at Jeffer-	
sonville) may know for what the same are	
F r 32	

charged, none of the fees herein before mentioned shall be payable to any person whatso-Hee bill to be ever, until there shall be presented to the perpresented be- son chargeable with the same, a bill in writing fore payment containing the particulars of such fees, signed by the clerk or officer to whom such fees shall be due, or by whom the same shall be chargeable respectively; on which said bill or account, shall be expressed in words at full length and in the same manner as the fees a. fores id are allowed by this law, every fee for which any money is or shall be demanded.

alerk to keep in his sflice a list of fees.

Penalty on

Sec. 3. The clerks of the Supreme and circuit courts shall set ap in some public place in their offices, and there constantly keep, a fair table of their es. on pain of forfeiting forty dollars for every court day the same shall be missing through their neglect; which penalty shall be to the use of the person who shall inform or sue for the same, and may be recovered in the circuit courts of this state by action of debt or indictment.

Sec. 4. Any officer who shall claim, demand or take any more or greater fees for any services by him done, within the purview of this act than herein before set down, shall officer for o- forfeit and pay to the party injured, besides ver charging such fee or fees, six dollars for every particular fee so unjustly charged, demanded or taken, to be recovered with costs, in any court having cognizance thereof in this state, by action of debt: Provided the same be sued for within twelve months after the offence shall be committed.

> Sec. 5. The clerks of the circuit courts. recorders, county surveyors and witnesses may at any time after their said fees shall have become due, make out their fee bills, (stating each item particularly and the amount thereof, which shall be signed by said clerks, recorders or surveyors, as the case may be, and the certificate of the witnesses? wes shall be

signed by the proper clerk,) and deliver the Fee bills to same to the sheriff of the proper county, who is hereby required and enjoined to receive the said fee bills and proceed to collect the same as herein after directed.

Sec. 6. The said sheriffs are hereby requi-

red and empowered to receive such accounts or fee bills, and proceed to levy and collect How sheriff the several sums of money therein charged shall proceed from the persons chargeable therewith, or lia fees. ble to pay the same, within one month after the same shall have been placed in his hands for collection ; and if such person or persons owing such fees shall neglect, refuse or delay to pay the same within one month as aforesaid, the said sheriff in whose hands the said fee bills are so placed or put, shall have full power and authority, and he is hereby strictly enjoined and required to proceed to make distress of the goods and chattels of such delinquent person so refusing and neglecting to make payment, either in the county in which such person resides or in which such goods and chattels may be found; and the sheriffs of the several counties of this state into whose hands any of the said fee bills shall have been placed to collect as aforesaid, shall, within one month after receiving the fee bills as aforesaid, proceed to collect the same by distress and sale of the goods and chattels of the party owing such fees as aforesaid, and for want of goods and chattels belonging to such delinquent, then of the lands and tenements of such delinquent, in the same manner and by giving the same notice by adverticement as is , required by sale on execution; But no action shall be had or maintained on any fee bill due to or owing to any of the persons aforesaid, so long as the party owing the same shall reside within the jurisdiction of this state; and the same proceedings shall be had against the person or persons who may by bond, have become security for costs for any other personper centum for collection or persons as is herein provided against the principal; and the said sheriff for collecting all such fee bills as aforesaid, shall charge and be allowed six per centum on the amount of each and every fee bill placed in his hands for co ction, to be paid by the person owing such fees; and no other fee or reward shall be allowed the said sher if for such collection. And if the said sheriff shall be sued for any thing by him done in pursuance of this act, he may plead the general issue and give this act in evidence.

When the eher ff shall account.

SEC. 7. Every sheriff of each county in this state, shall, within three months after having received the aforesaid fee bills of any of the persons as aforesaid, account with the said persons respectively, to whom the said fees may be due; and if any sheriff shall refuse to account with and pay over to the several persons to whom the same may be due, deducting such fees as are due by persons not residing within or having no visible property or estate in his county, it shall be lawful for the clerks of the Supreme Court, the clerks of the several circuit courts, the recorder, survevor or any witness to whom fees may be due as aforesaid, for services rendered as aforesaid, their heirs, executors or administrators, upon a motion made in the next succeeding session of the Supreme Court, for fees due therein, or upon motion in the circuit court for fees due therein, or due to any sheriff of any other county, any recorder, survevor or witness, to demand judgment against such sheriff so neglecting, or his securities; and such courts respectively, are hereby required to enter up such judgment accordingly: Provided, such sheriff or his securities shall have ten days notice of such intended motion; and judgment shall also be entered up against the said sheriff and his securities for the costs of such motion, unless such sheriff or other person shew good cause to the contrary, and

Notice of mo tion vs. same.

no replevin shall be allowed to such sheriff or his securities on any such judgment.

Sec. 8. The executors or administrators of any such sheriff or under sheriff shall be lia: Sheriff's exble to a judgment as aforesaid for fee bills re- ecutors hable ceived, to be collected by their testator or intestate and not accounted for as far as assets may be found in their hands. Every receipt produced in evidence, on any such motion, shall be deemed to be the act of the person subscribing it, unless he shall deny the same on oath.

SEC. 9. Sheriffs per centum and all other legal fee in a suit from final judgment to execution, shall by the sheriff be levied out of the estate and effects of the person against whom such execution shall be issued.

SEC. 10. The boar of commissioners in Allowance to each and every county in this state at their an- clerk and nual session for adjusting the claims of their sheriff of respective counties, shall make a reasonable missioners? allowance to their clerks and sheriffs for their services, not exceeding thirty dollars each per annum.

CHAPTER XLI.

AN ACT to establish a board of county commissioners,

APPROVED-December 17, 18 6.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That there shall be and hereby is organized in each County comcounty in this state, a board of commissioners inissioners to for transacting county business, to consist of continuance three qualified electors, any two of whom shall in office. he competent to do business, to be elected by the qualified electors of the several counties respectively (one of whom shall be elected annually to continue in office three years) and

until their succe-sors are chosen and qualified.

SEC. 2. At the first election in pursuance of this act, there shall be elected three commissioners, the person having the ighest number & grade ber of votes shall serve for three years, the person having the next highest number of votes, shall serve two years, and the person having the next highest number of votes, shall serve one year, but if two or more shall be equal in number, their grade shall be determi-

ned by lot.

Sec. 3. Each person elected as a commissioner shall on receiving a certificate of his e-To take oath lection, take the oath or affirmation required erafficmation by the constitution of this state, before so ne person legally authorized to administer the same; which oath or affirmation being certified on the back of such certificate; under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to take his seat with, and act as a member of the board, during the time for which he is elected, and until his successor shall be qualified or sworn into office.

Sec. 4. The commissioners thus elected and Considered a qualified, shall be considered a body polibody politic, tic and corporate, and as such, in all matters wherein the county is concerne. may sue and be sued, plead and be impleaded, answer and be answered anto, and do and transact, on hehalf of said county all business that

shall be assigned to them by law.

Where and when to meet, how long to sit.

SEC 5. The board of commissioners shall meet at the court house in each and every county, for the purposes aforesaid, on the second Monday of February, May, August and November, in each and every year, and shall continue in session three days at each meeting if the business require it: Provided however, if the circuit court shall meet on any of the before mentioned days, the commissioners shall not meet untill the Monday fellowing

Sec. 6. The clerk of the circuit court shall,

by virtue of his office attend the meeting of C'lk. of C. C. the board of commissioners, and keep a record and shenff we of their proceedings, and do such other business as he shall be required by law to do; and the sheriff of the county shall also, by himself or deputy, attend said board and execute their orders.

Sec. 7. when only two commissioners shall be present at the meeting of the board, and a When quesdivision shall take place on any question, it tions to be shall be continued until their next meeting be-

fore it shall be finally determined.

Sec. 8. Where any vacancy shall happen in the office of commissioner, the circuit court How vacarof the county, or the two associate judges in led. vacation, shall appoint a suitable person or persons to fill such vacancy until the next annual election for commissioners, when such vacancy shall be filled by an election of the electors of the county.

SEC. 9. The commissioners of each county To have a shall have and use one common seal, for the common purpose of sealing their proceedings; and copies of the same when signed and sealed by signed and the said commissioners and attested by their sealed eviclerk, shall be good evidence of such proceed- dence in ings, on the trial of any cause, in any of the courts. courts within this state. The commissioners Statement of aforesaid, at their session in the month of No- receipts and vember in every year, shall make out a fair expenditures and accurate statement of receipts and expen- of former ditures of the preceding year, and have the bemade. same set up at the court house door, and at Where and two other public places in their counties res- when to be pectively, within ten days after their said ses- set up. sion. And if the said commissioners, after Penalty for accepting their appointment, shall neglect or failure of durefuse to do his or their duty in office, he or ty. they so offending shall, on consiction by indictment before the circuit court of the proper county, be fined for every such offence, in any sum not exceeding one hundred dollars.

CHAPTER XLIL.

AA ACT for assessing and collecting revernue.

APPROVED-January 28, 1818.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That the lists of taxable property in this state shall hereafter be taken and ascertained in the form and manner following, viz: The county commissioners of the several counties in this state, shall, at their first meeting. (or on the second Monday of March.) in each and ever year hereafter, appoint one lister for each and every county. whose duty it shall be to receive and take lists of taxable property in their respective counties for that year, as is hereinafter directed.

Oath of of-

fices

Lister ap-

pointed.

Sec. 2. Each and every lister in each and every county in this state shall, before he enters upon the duties of his office, take and subcribe the following oath or affirmation, within five days after his appointment, viz: I, A B, do solemly swear (or affirm as the case may be) that I will, as lister for the county of to the best of my knowledge and judgment, diligently and industriously, honestly and faithfully execute and discharge the duties of a lister according to law.

Bo give bond

Sec. 3. And the several boards of countycoms missioners, shall direct their clerk, and it is hereby made his duty, after the appointment of lister shall be made, and the person so appointed shall have accepted the appointment, to administer to him the foregoing oath, and take his bond with two or more good freebold securities, in the penalty of not less than one-thousand nor more than two thousand dollars, in the name of the county treasurer and his successor in office, for the use of the county; conditioned that he will well and faithfully discharge his duty as lister for the county of

never mentioned and a service of	Date of receiving lists.	Persons names chargeable with	No. of acres of land first rate.	No. of acres of land second rate	No. of acres of land third rate.	County in which land lies.	Water course on which the land	Patent.	Entry.	Deed.	Bond.	No of Sec. or fractions.		Quarter-Sections.	Township.	Range.	Bound Servants above 12 year	Horses, Mears &c.	Stud Horses,	Rates of covering per season.	C \ No. of Lot.	rk's Letter	Grant Quantity.	
- min	April 15, 1818.	John Doe, Fr Richard	160	520		Harrison, Clark,	Hogan, Ohio	Patent	Entry			16 12	S V	V. qr.	4 3	1	ears old.	5 6	1	\$ 5 00	20	B	1000	
John Good 160 Knox, River, Deed 9 S. E. qr. 8 3 4 3 1													2 50	5 16	E	500 100								

, according to law : which bond shalk be acknowledged before a judge or justice of the peace, and witnessed by two or more persons, and by the clerk filed in his office.

Sec. 4 In case any person appointed lister, Vacancy how shall not accept the appointment within five filled. days, or in case the person appointed shall die, or from sickness be unable do the duties of lister, the commissioners shall meet within five days after being notified thereof, and appoint some other person as lister, who shall inall things be governed by the provisions herein contained : Provided always, that no sheriff or deputy sheriff of any county shall be eligible to exercise the duty of lister under this act.

SEC. 5. When any vacancy in the office of lister shall happen, by death or otherwise, of Clerk to fur any person so appointed, to comply with the mish lister requisites prescribed by this act, it shall be with form. and is hereby made the duty of the clerk within three days thereafter, to notify the county commissioners in writing, and it shall be the duty of any sheriff or constable to serve the same written notice on the commissioners with all possible dispatch.

SEC 6. It shall be the duty of the c'lk. of the Lister to take board of commissioners, within 3 days after the assessment of lister appointed has been sworn into office and property. given the bonds and securities required by this act, to make out a blank form similar to the following form, to wit:

See Forms.

And deliver the same to the person so appointed.

G G 33

Sec. 7 The listers in the several counties in this state shall, within 15days after having received their said appointments and given bond with security, proceed to receive from each and every person resident in his county, a list of all taxable property in his, her or their possession or care at that time, either as their own or as agent. executor, administrator, or otherwise; and it shall be the duty of the lister at the time of listing the property of any person, if practicable, to administer to such person the following oath or affirmation, viz # You, A B, do swear or affirm. (as the case may be) that you have given a true and perfect list of all the taxable property belonging to you or in your possession, or which you claim at this time, either as your own or as agent for any other person or persons, or as executor or administrator, or in any other manner whatever, and that you have not used any fraudulent means to evade the payment of taxes on any property in your possession as aforesaid.

renalty for false return

of property.

toadminister

an oath.

SEC. 8. If any person or persons, the holder or owner of any taxable property in his own right or in right of his ward, as agent, executor, administrator or otherwise, shall return a false or fraudulent list, or refuse to give a list on oath or affirmation as required by this act, or shall by any fraudulent means whatever, attempt to evade the payment of taxes, it shall be the duty of the lister to return the name or names of all such persons so offending to the board of county commissioners, who shall add one hundred per cent. to his. her or their taxes, and the lister shall proceed to list his, her or their property, from the best information he can obtain: Provided however, it shall be the duty of the lister to notify the person or persons so refusing, to attend the next meeting of the board of county commissioners, & then & in that case, if the person or persons thus charged shall then satisfy the said board of countycommissioners, that he, she or they have not been guilty of fraud or improper conduct in trying to evade the giving in his taxable property as aforesaid, the said board of county commissioners shall then remit such addition-

Sec. 9. The following rate of taxes shall be paid annually, for every hundred acres of Rate of anland and so on for a greater or less quantity. nual taxes for, O. first rate land, one dollar; on second rate state. land, eighty seven and a half cents; and on third rate land, sixty two and a half cents. And for every bond servant above the age of twelve years (other than apprentices) three dollars. And the revenue arising from land and bond servants shall be applied to state purposes. And the following rate of taxes shall be annually paid, for county purposes, to wit: for every horse, mare, mule or ass, For county, over three years of age, not exceeding hirtyseven and a half cents; for covering horses, once the rate they stand at by the season; for every tavern, not less than ten nor more than twenty dollars; for every ferry, not less than five nor more than twenty dollars; town lots in proportion to their valuation, not exceeding fifty cents on every hundred dollars. And it is hereby made the duty of listers to call upon two disinterested householders to assist him in the valuation of town lots, with the improvements thereon.

Sec. 10. Any person or persons, who shall own or hold land or town lots, either in his, Real estates her or their own right, or in right of any other how given inc. person as executor, dministrator, guardian, agent, or in any other manner whatever, shall include in the list, he. she or they shall give in to the lister, all such land or town lots which he, she or they may have as aforesaid, in said county, and shall specify as nearly as he, she or they can, the quantity of each tract and water course on which it may be, and the quality of the land, together with the number of

the section, and the quarter, range and township thereof, if part of a section, if so designated in the survey, bond, entry, patent or deed; or, if otherwise. the number of the lot or donation, together with the letter or otherwise, as

Lister to make out two fists.

the same may be designated. Sec. 11. Every lister, appointed and sworn in as aforesaid, shall make two separate and distinct lists, one of the lands subject to taxation, lying in his county; which list shall contain the names of the person or persons, company or corporation, charged with taxes, alphabetically arranged, the number, quantity and quality of each tract, the county it is in, the watea course on which it lies, (if any) the quarter section, township whether north or south, and range whether east or west, and what meridian or otherwise, the number and letter, if so designated, or otherwise as the case may be, and whether owned or held by patent, deed, entry or bond. The other list shall contain the names of all persons holding or claiming any kind of taxable property, other than land, alphabetically arranged, and opposite to each name the quantity or number of each kind of taxable property, in a separate and distinct column; which two lists he shall deliver to the board of county commissioners or their clerk, on or before the second Monday in May annually; and it shall be the duty of the said county commissioners, to have three fair and accurate copies of such lists of all the lands and bond servants in their county subject to taxation, made out by their clerk. with the particular tax on each tract and bond servant, and the sum total thereof; which list shall be certified by the clerk. One of which copies the clerk of the board of commissioners shall, within thirty days thereafter, transmit to the Auditor of State, on penalty of forfeiting for every time he shall so fail or neglect to transmit the same, the sum of five hundred

Commissiondollars, to be recovered by action of debt for the use of the state in any court having juris's diction thereof, one other copy it shall be the duty of the said clerk to deliver to the sheriff of the said county at and within the same time it is made his duty to transmit one to the Ausditor of State, under the same penalty, to be recovered in the same manner; and the other of which copies he shall retain in his possession, and file with the other papers of the board of county commissioners.

SEC. 12. It shall be the duty of the county commissiones, when the list of taxable property other than lands, shall be laid before

them at their meeting on the second Wonday in May annually, to carefully examine and correct the said tax list. The county commis- commission sioners shall then proceed to lay the tax for ers to assess county purposes, to the amount necessary, not taxes. exceeding the rates on each species of property herein before enumerated; and on land, not exceeding one half of the tax for state purposes. When the list shall have been corrected, and the tax laid as aforesaid, it shall he the duty of the clerk of the said board of Clk. to make county commissioners to make out three fair three transand accurate transcripts thereof, one of which cripts. he shall deliver to the sheriff at the time be delivers the list of state taxes, another to the county treasurer at the same time it is made his duty to forward to the Auditor of state one of the lists of state taxes, and the third he shall retain on file with the other papers in his office; and if at any time within any year before the annual meeting of the said board of county commissioners in August, any person shall think himself, herself or themselves ag. Persons aggrieved by improper listing or overrating their grieved their property, they may, upon application to the board of county commissioners at their August term, have the same redressed by the said board of county commissioners, whose

duty it shall be to correct all such errors, and

forward a certified copy thereof to the Audi-

ersto make out three lists, & to whom transmitted.

tor of state, if the same shall relate to the take for state purposes, or, if for county purposes, to the county treasurer, one copy to the sheriff and retain one on file; and it shall be the duty of the Auditor of state or county treasurer, as the case may be, to credit the sheriff with the amount thus certified on his proper account.

on residents Tanda rawed.

Sec. 13. The listers of the several couns ties within this state, shall proceed to obtain from the best information in their power, lists of all non residents lands and lands belonging to minors who have no guardians, and the estates of persons deceased where there is no executor or administrator, subject to taxation. in which he shall describe the said lands as those bolonging to residents, and shall, from the best information he can procure, set the said lands down as first, second or third rate, as the case may be, which lands shall be taxed as other lands are or may be, and shall or may be exposed to sale for non payment of taxes as in other cases.

Sheriff's duty as collector.

Sec. 14. The sheriff in each county as collector, shall, on or before the first day of September annually, demand payment both of the county and state taxes, or amount of assessment of each person or persons owning or claiming taxable property, whether real or personal, in their proper county, in person or by notice in writing left at his, her or their usual place of residence; and if any person shall neglect or fail to pay to the sheriff on or before the first day of October, provided the sheriff shall on or before the first day of September, have called upon him, her or them for their tax, it shall then be the duty of the sheriff, and he is hereby empowered to take the personal goods and chattels of the person or persons so failing to pay his, her or their land taxes or their taxes for county purposes, and shall thereupon proceed to give ten days notice of the time and place at which he intends

to expose the said goods and chattels to sale. by advertising the same in three of the most public places in the township wherein such delinquent or delinquents reside: Frovided always. That the same delinquent or delin- Delinquent quents may at any time before the property distrained be sold, ask for and receive the said property, on tendering to the sheriff the amount of his, her or their taxes for state and county purposes then due, and the expenses of keeping the same, together with fifty cents to the sheriff for his trouble and expenses for distraining and advertising the said property; and in case the property so destrained and taken for taxes, sells for more than the taxes due from the delinquent or delinquents, the sheriff shall be entitled to receive for his trouble in distraining, advertising and selling the same, the sum of seventy-five cents; but in case there is not a sufficient sum produced by the sale of such property to pay the said taxes, the sheriff shall, and he is hereby authorized to make a second distress and sale as aforesaid, to make the amount of taxes: Provided however, That if any person or persons shall think himself, herself or themselves aggrieved by any distress and sale hereby au thorized, he, she or they may apply to the board of county commissioners at their next meeting after such distress and sale, and if upon a fair hearing of the case, the county commissioners shall be of opinion that such person or persons have been injured unjustly, they shall grant redress of the injury out of the percent allowed the sheriff, and the treasurer is hereby directed to obey such orders of the county commissioners, and the person or persons shall moreover be entitled to have their action in court for damages sustained for such unreasonable distress.

SEC. 15. In case of any delinquent or delinquents, for non payment of taxes for county or state purposes, and no property, goods or

may redeem

Second dis-

Proviso for persons aggrieved.

For want of nersonal property, lands may be sold.

Provison for

redemption

thereof.

chattels of such delinquent or delinquents isor are to be found within the county wherein the lands of such delinquent or delinquents do lie, or where the list of taxable property for county purposes shall be given in, it shall be the duty of the sheriff as collector, to proceed to levy and collect the sum or sums due and in arrear, by the sale of the land or lands of such delinquent or delinquents, at the courthouse door in his county, or so much of such land or lands as will bring the taxes and costs that are or may be due and in arrear : Provis ded always, That if the owner or owners of any tract or tracts of land, or any person for him, her or them, shall on or before the day on which said land shall be advertised for sale as hereafter mentioned, tender and pay the amount of taxes and costs, or deliver to the sheriff in lieu of the land or lands, goods or chattels sufficient to make the amount of tax and costs so in arrear; which goods and chattels shall be sold on the same day and at the same place the land or lands were directed to be sold, reserving the overplus, if any there be, for the owner of such land, goods or chattels to be paid to him, her on them on demand, or to such person or persons as are legally authorized to receive the same: Provided however, In all and every case where the owner or owners of any land or lands shall give up goods or chattels to secure his, her or their land, the sheriff shall not give a receipt for the payment of his, her or their taxes until the amount of taxes and costs are satisfied by the sale of the goods and chattels, and if at the day of sale, the goods and chattels so given up. will not bring the amount of taxes with costs, then the sheriff shall proceed to sell the land or lands for the balance due.

Sheriff not al

Sec. 16. In all sales of land or lands, goods or chattles for taxes, no sheriff or depuflowed to bid. ty sheriff shall directly or indirectly bid for or purchase any land or lands, or other property so sold as above described, and prior to any sale or sales made of the land or lands of any delinquent or delinquents, the sheriff shall give at least twenty days notice by advertise. Notice of sale ing at the court house door or where the court was last holden in the county in writing, and in some public newspaper in this state, for three several weeks successively, at the time and place of such sale

MEC. 17. When any tract of land is not sold as aforesaid, for want of a purchaser or purchasers, it shall be the duty of the clerk of sold to be cer the board of county commissioners, upon sat tified to the isfactory evidence thereof to him produced, to Auditor, and certify that the land so offered for sale would sheriff renot sell for want of a purchaser or purchasers, therelor. specifying the tract, and upon the production of the said certified list to the Auditor of state or treasurer of the county by the sheriff, he shall be credited for the amount of the taxes due thereon.

SEC. 18. When any lands are sold as aforesaid, by the sheriff, it shall be the duty of the sheriff to give the purchaser or purchasers Certificate to a certificate of the tract or parts of tracts of be given the land sold, and specifying the number of the tract, lot, letter, section or quarter section as specified in the duplicate, and for what sum sold; which certificate shall be given in presence of two witnesses, and shall vest all right, title, interest and claim of the owner or owners to the land sold for taxes in such purchaser or purchasers, his, her or their heirs, and such purchaser or purchasers shall be deemed and taken, so far as the right and title to said land thus purchased will entitle him, her or them, as tenant or tenants in common with the owner or owners, or proprietors of the o. ther part of the tract, for the quantity mentioned in the certificate, and a partition thereof may be had as is provided by law in other cases; and such certificate being duly executed and acknowled by the sheriff, shall be H 11 34

admitted to record as other conveyances of re-

Time of redemption.

al estate: Provided however, That no such partition of the land, or record of the certificate shall take place until the expiration of two years from the time of such sale; and if within the said two years, the former proprietor or proprietors, owner or owners, or any person for him, her or them shall tender or pay to the purchaser or purchasers the sum by him or them paid for the said land, with the addition of one hundred per cent per annum; then and in such case, the said certificate of sale shall be void and of none effect, either in law or equity: But if such purchaser or purchasers aforesaid. do not reside in the county in which the land so sold shall be, the original owner or propriet r of the same may deposit the amount of the tax and costs, with the additional per centum aforesaid, with the county treasurer of the said county, and notify the said purchaser by advertisement in one of the public newspapers nearest thereto, which when done, shall have the same effect as if tendered or paid personally.

And amount thereof.

Taxes when to be paid.

Quietus to Sheriff.

SEC. 19. It shall be the duty of the sheriff to pay over to the state treasurer on or before the second Monday of December, annually, the taxes due from his county to the state, for which monies so paid over, the state treasurer shall give a receipt to the sheriff; which receipt shall be a sufficient voucher to exonorate him for the amount therein contained; which receipt, if in full for the taxes of that year, the sheriff shall within one week thereafter, produce to the Auditor, who shall give the sheriff a quietus for the amount allowed the said sheriff, nine per cent on the money by him so paid, and discount the same accordingly; and if at any time, the sheriff of any county shall fail to pay to the treasurer and produce his receipt to the Auditor by the time specified, the Auditor shall make out particular statements of the evidence of the claims,

and transmit the same to the prosecuting at- railing to pas fornies respectively of the counties where such ever, bow to delinquents or their securities, or legal representatives, or either of them reside.

SEC. 20. The said prosecuting attornies of the counties aforesaid respectively, are hereby authorized and required, as soon as they or a- Duty of prosny of them receive the statements of the evi- couring attor dence aforesaid, to commence suit in the name ney. of the Auditor of state, against every such delinquent or their securities, or legal representatives for the recovery of the debts, dues and demands aforesaid, in the proper county, and as far as possible or practicable to collect the same, and pay the amount into the hands of the treasurer of the state, for the use of the state, within sixty days after such public mo-

nies may be collected as aforesaid.

SEC. 21. The said Auditor and Treasurer of the state, whenever it may be thought advisable by the attorney presecuting any such suit as aforesaid, shall attend the trial of any such suit, with the documents of every description in their offices, which in the opinion of the said attorney or of the said Auditor or Treasurer, may be necessary to support the suit; and the expenses necessarily incurred by those officers in their attendance at the trials aforesaid, together with six per centum on the total amount of the sum thus sued for, shall be damages. paid by the delinquent or delinquents or their securities, and the same shall be taxed by the court trying the cause, and be made a part of the judgment for the amount; and if at any time the sheriff of any county shall fail to pay to the treasurer, and produce his receipt to the Auditor by the time specified, the Auditor shall forward the accounts as aforesaid: Provided always, notwithstanding. The sheriff shall pay to the treasurer the full amount sued for, yet he shall pay all the costs accrued on the said suit, and ten per cent damages for such neglect to settle in due time, and also six

Delinquent sheriff to pay costs of prosper cent on the sum sued for to the prosecuting

MEC. 22. It shall be the duty of the sheriff of each county within this state, to lay before the board of county commissioners at their November session or term, a list of all the names of all the delinquents charged with county taxes, which could not be collected for want of property or buyers; which said board of county commissioners are hereby empowered to strike out the names of such persons as appear to be delinquent, and give the sheriff credit for such as he may be justly entitled to; which being done, the balance shall be struck and the sheriff shall be charged with the same, which he shall pay to the county treasurer on or before the first day of December, annually; and if such sheriff shall fail to pay to the county treasurer the balance due upon the settlement aforesaid, and before the first day of December, in each and every year, it shall be, and it is hereby made the duty of the treasurer of the county, within twenty days thereafter, to furnish the prosecuting attorney for said county with a written statement of the value or amount due from such delinquent sheriff to said county, and the prosecuting attorney shall be authorized, and be is hereby empowered to obtain judgment on motion against said sheriff and his securities, at the next circuit court for said county, for the amount said delinquent may be in arrear, together with ten per cent thereon for the use of the county, and six per cent to the prosecuting attorney as a fee for his services and costs of suit; all of which shall be taxed by the court and make a part of the judgment; but in all such cases, the delinquent sheriff and his securities shall have ten days notice in writing: Provided however, That nothing

herein contained, shall be so construed as to

prevent the treasurer from receiving and the

sheriff from paying over to the county treasu-

When sher-

iff allowed a

credit in ca-

ges of delin-

cluency.

Delinquent sheriff to be motioned against

rer all county claims, certified according to law, for taxes due the county, and the county shall give such sheriff credit for the amount thereof.

SEC. 23. The sheriff shall be allowed by the county treasurer six per cent, as a compensation for collecting and paying over the er. monies by him collected for county purposes as aforesaid; and the said county commissioners shall allow the listers in their respective counties, such compensation as they shall deem just and right.

SEC. 24. Where any tract or tracts of land Lands not is or are not sold at the time aforesaid for the sold for want of buyers, it shall be the duty of the sher- ders, may be iff to advertise the same again as afore- re-exposed said, and expose the same to sale at each suc- and how. cessive Circuit Court for three terms, unless sooner sold, and the sheriff shall account to the

treasurer of state for the same.

SEC. 25. And it shall be the duty of each and every sheriff in this state, to enquire after and collect the taxes on all the taxable prop- lect the tax erty in their respective counties, which the lis- on all taxable ter thereof has failed to assess, either from preperty not neglect or otherwise, and pay the same over collected and to the proper officers at the same time they are same on oath, bound to pay over other taxes; and it shall be the duty of the officer who is entitled to receive the tax, on his receiving such tax, to require of and receive of such sheriff an oath in writing, signed by such sheriff, properly certified by some Judge of the Circuit Court or justice of the peace; which said oath shall set forth the amount of all the taxes such sheriff has collected as aforesaid, and from whom and for what collected; and the officer receiving such oath or affirmation shall file it in his office for safe keeping.

SEC. 26. Where any tract of land is not sold as aforesaid for the want of buyers, it shall be the duty of the clerk of the board of county commissioners, upon satisfactory evi-

Sheriff tocol-

dence thereof being produced to him, to certif that the land so off red for sale would not sell for the want of buyers, specifying the tracts; and upon the sheriff producing the said certified list to the auditor he shall give him credit for the amount of state taxes due thereon, and the costs of advertising the

menalty on collector for glect.

SEC. 27. Every collector, who shall make fraud or ne-1 such sale as aforesaid, shall, at or within the time he returns his list of delinquents, make return thereof to the board of county commissioners, to which return he shall particularly state every circumstance and expence of attending the same; and if the sheriff shall fail to make said return, or shall charge other or greater fees or expenses than allowed by law he shall be liable to be fined in any sum not exceeding one hundred dollars, to be recovered by action of debt in the Circuit Court by the county or the person or persons injured.

> Sec. 28. Where the greater part of any tract of land shall be first cate, the whole tract shall be listed as first rate land; and where the greater part of any tract of land shall be second rate, the whole tract of land shall be listed as second rate land; and where the greater part of any tract of land shall be third rate, the whole tract shall be listed as third rate land.

Indulgence to commissioners in

The quality

ascertained.

of lanel, how

Sec. 29. If the commissioners of any new county shall not be elected in time to carry the provisions of this act into effect, they are herenew counties. by authorized to meet the Monday after their election, or as soon thereafter as may be for that purpose, and no advantage shall be taken of any officer in account of not receiving his appointment, or doing the duties of his office a the time herein provided in such new counties, provided such officers shall use reasonable industry in performing such duties.

> Sec. 30. It shall be the duty of the Secretary of state to furnish the printers of this

state with a copy of this act as soon as it shall have been approved and signed, which printers are hereby required to print the same as soon as it can be conveniently done.

All acts and parts of acts, heretofore in force in this state, respecting the assessing and collecting of revenue be and the same are hereby repealed. This act to take effect and be in force from and after its publication.

CHAPTER XLIII.

AN ACT for opening and repairing public roads and highways.

APPROVED-January 29, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That all public roads and highways, established by lawful rublic roads, authority, shall be opened, amended and kept now opened in repair, agreeable to the directions of this catedact, and the county commissioners in their respective counties shall have authority upon application to make and enforce all orders necessary as well for the opening all new roads which may be useful and convenient as to vacate any public road or any part thereof which upon enquiry shall be found useless and burthensome within the limits of their respective counties.

Sec. 2. That previous to any application being made to the board of county commissioners, for an order to lay out any new road, any person desiring the same shall advertise it in two or more public places in each township through which such proposed road may be designed to run, for thirty days prior to the session aforesaid.

Sec. 3. Every application for any public road shall be by petition, specifying particularly where such rood begins, and where the

Application for opening roads, how made.

same shall terminate, presented to the county commissioners of the proper county, signed by at least twelve freeholders, resident in the township or townships through which such road shall be intended to run, three of whom shall be freeholders of the neighborhood.

appoint view-

Sec. 4. When any petition in form afore-County Com- said shall be presented to any board of commissioners to missioners, praying for an order to lay out a new road through any part of said county, and the board be satisfied that the petitioners have given the necessary notice required by this act, the board shall order such petition to be publicly read, and thereupon shall appoint three disinterested freeholders of the county; which said freeholders or any two of them, after taking an oath or affirmation faithfully and impartially to discharge the duties enjoined on them as viewers of the road for which they are appointed, shall proceed to view the ground between the two points specified in the petition, and shall, with diligence and attention, examine, lay out and mark such road, on the best ground that a possible way can be obained, and not to take the same through any persons enclosure of one years standing, without the owner's consent, unless as good a way cannot otherwise be had with convenience to the public, and shall make out a statement of their proceedings and certify the same and return them to the board of county commissioners at their session next to be held for such county; and the board of commissioners on receiving such return, shall cause the same to be publicly read on the day at which such return shall be made; and if no objections are made to such proposed highway, on the reading of the return aforesaid, it shall be the duty of the commissioners to order the said road to be opened a necessary width not exceeding thirtythree feet, and made in all other respects convenient for the passage of travellers, and cause a record thereof to be made; which shall thenceforth be deemed a public road.

SEC. 5. If any person through whose land any proposed public road may run, feels aggrieved thereby, such person may at anytime persons agbefore such road is recorded, and not after- grieved wards, set forth his or her grievances byway of remonstrance against such proposed road or any part thereof, presented to the commissioners of the proper county, and the commissioners shall nominate five disinte ested freeholders of the county, who shall not be related to any of the parties interested in opening or objecting against such proposed road. & shall assign a day for such freeholders to meet where such proposed road begins. It shall be the duty of such five freeholders respectively, having had five days previous notice from either of the parties, to meet on the day and at the place assigned by the commissioners, and then or any other day prior to the next session to which the majority may adjourn, having first taken an oath or affirmation, before some person qualified to administer oaths, impartially to assess the damages or several damages, which any such objector or objectors may be likely to sustain by reason of such proposed road, in case the same should be opened and continued through his or their lands, to review such proposed road, and take into their consideration how much less valuable any tract of land, the property of such objector or objectors, will be rendered by reason of such proposed road, should the same be opened and continued through such tract respectively, and shall assess the damage or several damages accordingly, and report the same to the next session of the board of county commissioners, to be held for the proper county, and if three of them agree in assessing damages to the amount of the cost accraing on such remonstrance, the board of commissioners may, if they consider it expedient, order the damages to be defrayed out of the county stock; or If that be considered inexpedient, and the

petitioners will defray the same, then in either case such road shall be opened, and a record the eof made; and the costs and charges having secrued in virtue of such remonstrance shall be defrayed out of the county treasury; but if three of such freeholders do not agree in assessing damages to the amount of the costs aforesaid, then such objector or objectors shall pay the costs, & such proposed road shall be ordered to be opened and recorded in like manner as though no objection had been made.

lic road, how and by whom made.

SEC. 6. That objections, in time and manner aforesaid, to any proposed public road, may be made by any twelve freeholders or Objections to householders of the neighborhood through opening pub- which the same runs, on account of the same being likely to be useless and burthensome to the townships respectively; and when such objections are made the board of county commissioners shall proceed in like manner, by review thereof, as described in the last preceding section of this act; and if the freeholders who review, or any three of them, agree that the said proposed road is likely to be useless and burthensome, if it be opened and kept in repair by the public, then, unless the petitioners respectively will agree to open and keep in repair such proposed road at their own private expence, all the proceedings shall be stayed, and the petitioners shall, in either case, pay the costs and charges that may have accrued; but if three of the aforesaid viewers do not report against such proposed road as likely to become useless and burthensome, the objectors shall pay the costs and charges which have accrued on such review, and the said proposed road shall be ordered to be opened and a record thereof made, and shall thenceforth be deemed a public road.

SEC 7. If any person through whose land any public road shall run, shall be desirous of cultivating such part of his land, it shall be lawful for such person or persons to petition

the board of county commissioners to permit him, her or them, at his, her or their own expense, to turn such road through any part of his, her or their own land, on as good ground, and without increasing the distance, to the injury of the public; and upon such petition the said board of commissioners shall appoint three disinterested freeholders, who shall proceed to view the ground on which the said road is designed to be turned, and measure the respective distances of that part of the road already established, and of the proposed way, until it shall intersect the road cstablished aforesaid; and at the next session of the said board of commissioners shall report the several distances, with their opinion respecting the ground on which such proposed road is to run; and if it shall appear to the satisfaction of the board of commissioners aforesaid, that the ground on which such new part of the road is designed to run is equally situated, and that the difference in the distance will not materially injure the public, such board of commissioners shall permit him, her or them, to turn such road; and on receiving satisfactory assurance that such petitioner or petioners have opened such road equally convenient for travellers, shall vacate so much of the former road as shall be between the different points of intersection, and record such viewers' report; which afterwards shall be a public road or highway.

SEC. 8. When any public road or highway shall be considered useless, and the re- roads may be pairing thereof be an unreasonable burden to discontinued the township, and any twelve freeholders or householders of such township, may make application to the board of commissioners in writing, signed by such persons, setting forth the situation and other circumstances of the road which they wish vacated as aforesaid, in a clear and intelligible manner, which shall, at the session to which it is presented, be pub.

When & how a road may be changed.

licly read on two different days of the session, and no further or other proceedings shall be then had thereon, but the same shall be adjourned to the next ession, when the same shall be again read, when, if objections are not made thereto in writing, signed by twelve freeholders or householders, the said commissioners, on any day in the same session except the first day thereof, may proceed to vacate such public or part of said public road, and the costs and charges shall be defrayed by the county; but if no objections, in manner aforesaid, are made, the commissioners shall proceed to appoint viewers, who shall be governed in every respect as those appointed by the board of county commissioners in similar cases; and the judgment of the commissioners shall be conclusive in the premises. if the same be not appealed from in nine months after giving any such judgment to the circuit court of the county; which court is hereby authorised to hear and determine the same; and their decision shall be final and conclusive.

SEC. 9. Nothing in this act contained shall be so construed as to give authority to any board of county commissioners or circuit court, to vacate any street or highway, in any city, borough, town or village, in the state which has been laid out by the late proprietors thereof, or by any other person or persons, and dedicated to public use, nor to vacate any road laid out by order of the board of commissioners which is not repairable at public charge, nor any road or passage claimed by private right, nor to rivers or streams of water.

SEC. 10. Each and every male person eighteen years of age, having resided thirty days within any township in this state, shall be subject to work on roads and public highways not exceeding six days in any one year, whenever the supervisor of the district in which he resides shall deem it necessary; and it shall be

Certain streets &cnot to be vacated.

Persons liable to work

Supervisor to notify.

the duty of every supervisor respectively, to call out every such resident aforesaid, or any part thereof, when in his opinion, it may be expedient, to work on the public road or highway within the devision respectively allotted to him; and if such resident, having had one days notice thereof from the supervisor, shall neglect or refuse to attend by himself or substitute, to the acceptance of the supervisor, on the day and at the place appointed for working on the public road, with such necessary and common articles of husbandry as the said supervisor shall have directed him to bring wherewith to labor, or having attended, shall refuse to obey the direction of the supervisor, or shall spend or waste the day in idleness or inattention to the duty assigned him, or pay to the supervisor the sum of seventy-five cents; every such delinquent shall forfeit the sum of seventy five cents, to be recovered at the suit of the supervisor respectively, before any justice of the peace within the township wherein the delinquent shall reside, to be appropriated towards repairing the public roads within the same township; and it shall be the duty of the board of commissioners, at the time that they appoint supervisors, to appoint to each one his part of the road and hands to assist in opening and keep the same in repair, and each person who shall furnish at the request of the supervisor, a pair of horses or oxen and driver with a plough, cart or waggon, shall for each days labor performed by, them, receive credit for three days labor, and a proportionate credit for smaller services rendered. And in all cases where an overseer shall not have an opportunity of giving a notice personally, it shall be lawful for him to leave a written notice at Written nothe usual place of residence of such person, tire may be which shall be deemed a legal notice: Provided however, That the county commissioners may exempt any person from working on roads and highways, not being free-holders, who

may be deemed incapable to perform a days

work from age or infirmity.

BEC. 11. The board of county commissionors for each and every county in this state, at their May session, to be holden in each and Supervisors every year, shall appoint a necessary number appointed, & of free holders in each and every township within their respective counties, to be supervisors of the highways, who shall serve one year; and the said supervisors of the public roads and highways of the several townships, shall be, and they are hereby required and enjoined, as often as the said several roads and highways within their townships shall be out of repair, or as often as any new road shall be laid out and directed to be opened by lawful authority, to hire and employ a sufficient number of labourers to work upon, open and amond, clear and repair the same in the most effectual manner, and to purchase wood and all other materials necessary for that purpose, and oversee the said labourers and keep them close to their business, and take care that the said roads and highways be effectually opened, cleared, amended and repaired according to the true intent and meaning of this act:-Provided always, That nothing in this act shall be so construed as to authorise the supervisor to hire hands until he has duly notified those allotted to him by the board of commissioners, to attend and perform the number of days labor required of them by this act.

Sec. 12. And in order to enable the supervisors the more effectually to discharge their duty, it shall and may be lawful for the supervisors aforesaid, or any other person or persons by his or their order and direction, to enter upon any lands adjoining to or lying near the public roads and highways within their respective townships, and to cut or open such drains or ditches through the same as he or they shall judge necessary completely to carry off and drain the water from such roads:

Provided, the same be done with as little injury and damage as may be to the owner of such lands; which drains and ditches so cut and opened, shall be kept open by said supervisors, if necessary, and shall not be stopped or filled up by the owner or owners of such land or any other person or persons whatever, under the penalty of five dollars for every such offence, to be recovered before any justice of the peace in any county, and be applied to the purpose of opening and repairing highways in the district wherein the offence shall have been committed.

Sec. 13. The said supervisors shall have full power and authority on any unimproved grounds or lands adjoining the road or high- Supervisors way within their respective townships, to dig may dig graor cause to be dug any gravel, sand or stone, or to gather any loose stones lying on the said lands, or to cut down any wood or trees growing or adjoining to the said roads or highways as he or they shall think necessary for the purpose aforesaid : Provided, the same be done with as little damage as may be to the owner or owners of such land; and the same gravel, stones, sand or wood so. dug, gathered or cut to be carried off without the let, hinderance or control of the owner.

Sec. 14. If any person or persons shall, for the convenience of themselves or neighbors, wish to have a cart road laid out from or to the plantation or dwelling place of any person or persons, or to any public highway to ed. intersect another, the person or persons applying for the same shall advertise their intentions, as by this law is required in ease of highways, and shall petition the board of commissioners of the proper county, who shall cause the same to be publicly read, and shall order and direct a view of the place where such road is required to be laid out.

SEC. 15. Every cart-road laid out in pursuance of this act, not exceeding eighteen feet

Bupervisors may open ditches, drains, Sec.

their day.

Oart-ways may be made mublic.

in breadth, being first paid for by the petition: er or petitioners for such road, shall be recorded, and from thencefoward shall be allowed and declared a common road or cart-way, as well for the use and convenience of all such as have occasion to travel the same, and shall be opened by the persons petitioning therefor :-Provided nevertheless, That if the said road shall be laid out through any person's unimproved land, then the same shall be valued as in this act is directed in case of persons objecting to public roads or highways, and on the value thereof being paid to the owner or owners of the land by the persons request the same was laid out, they shall have liberty to open said road agreeable to the order of the board of commissioners.

Cart-way how changed

Sec. 16. If any owner or owners of any land through which such cart-road may pass, shall be desirous of improving his or their lands, they shall be permitted to turn the same, provided the ground on which they propose turning it is equally as good for a road, and shall not increase the distance more than one twentieth part thereof; or shall be permitted to hang swinging gates upon such cart-road or roads; but shall at all times keep the said gates in good order and repair, under the penalty of one dollar for every offence, to be recovered before any justice of the peace in any county wherein the offence shall have been committed, by any person prosecuting for the same, one moiety thereof to the prosecutor and the other moiety towards keeping said roads in repair.

Sec. 17. It shall be the duty of each and every supervisor, within their respective districts, to erect and keep a post at the forks of every public road or highway, within their Supervisor to erect sign respective districts, containing an inscription in legible characters, directing the way and mentioning the most remarkable places on each road respectively; and if any person

shall demolish any such post, deface or alter any inscription thereon made, with an intent to destroy the utility of such sign, he or she so offending shall, for every such offence, forfeit and pay to the supervisor of such road respectively, the sum of ten dollars, to be recovered before any justice of the peace of the county wherein the offence shall have been committed, for the use of such district respectively.

SEC. 18. If any person shall take down, obliterate or destroy any advertisement or writ- renalty for ten notice, necessary to be put up under the obliterating directions of this act, he, she or they so offen- or destroying ding shall, for every such offence, forfeit and pay the sum of ten dollars, to be recovered by indictment, before any court having cognizance thereof, to be held in the county where the offence shall have been committed, to the use of the county respectively.

SEC. 19 If any person shall obstruct any road laid out, or to be kept in repair under the anthority of this act, and shall suffer such obstructions to remian, to the hinderance of passengers; every person so offending, shall, for renalty for every such offence, forfeit and pay a sum not obstructing exceeding one hundred dollars, nor less than one dollar, to be recovered by action of debt, qui tam or indictment, before any court having cognizance thereof, to be held in the county in which the offence shall have been committed, one half to the county respectively, and the other half to whosoever will sue for the same; but when the prosecutions shall first be commenced in behalf of the county, the whole shall accrue to its use.

Sec. 20 hat in case of default or non attendance of minors or servants to work on pub- Master liables lic roads or highways, when legally called on for servants as the law directs, the parent or guardian, or master shall be held and deemed responsible for all fines and costs which are recoverable by law.

SEC. 31. It shall be lawful for the county J J 36

posts:

commissioners within their respective counties

in this state, when they settle with the super-

visors of their counties, to allow to each the

sum of seventy five cents a day for every day

they were faithfully engaged in warning the

hands within their districts; which account

shall in all cases be swern to. And it shall

be the duty of the supervisor, at the time he

Allowance to supervisors.

To deliver lists of delinquents.

Fines how collected and appropriated

a road tax.

exhibits his accounts, to deliver to the board a list of all the delinquents within his bounds, stating with what justice he has deposited them for collection; which list shall also be sworn to be just and true. And it shall be the duty of every justice in whose hands delinquents' lists are deposited, to proceed within ten days, by summons or warrant, and collect the same, and pay the amount to the county treasurer as other fines, on or before their May session of the commissioners annually, under the penalty of five dollars for every such neglect, to be recovered in a summary way, before any justice of the peace in the county, by the treasurer; and the fines collected as above, and paid unto the county treasurer, shall be paid by the commissioners to the overseer of the road, whose predecessor returned the delinquents of whom the said fines were collected, to be appropriated by said overseer in opening said road, excepting so much thereof as will pay the said supervisor for warning his hands in his district; and he shall account how the same was appropriated upon oath at the expiration of his office, under the penalty of the amount of said fines, to be recovered by motion of the prosecuting attorney.

SEC. 23. The board of county commissioners shall have power, whenever they may Commission. deem it necessary, to levy a tax on all lands ers may levy subject to taxation within their respective counties, not to exceed one fourth of the amount laid for state purposes, and transmit a duplicate thereof to each supervisor within the township of their respective counties, whose duty it shall be, to advertise a day when and where he will meet to work on the public road or bighway; and every person who chooses, may meet by himself or substitute, and work out their road tax; and should any person charged with such road tax, fail or neglect to perform the work at the time and place as above specified by himself, agent or substitute, the supervisor shall return each and every person so failing or neglecting to work as is required in this section, to the board of county commissioners of their respective counties; which board shall proceed to have the said taxes collected in the same manner, and by the same officers as other county levies are, and to be paid into the county treasury as other county levies, and by order of the commissioners, paid over to the supervisor in the same manner as is directed in the preceding section of this act.

All laws and parts of laws heretofore in force in this state, concerning the opening and repairing public roads and highways be, and the same are hereby repealed.

This act to take effect and be in force from

and after its publication.

CHAPTER XLIV.

AN ACT establishing a county Treasurer.

APPROVED-January 1, 1817.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That there County treashall be appointed in each and every county surer to be ap within this state, a county treasurer.

SEC. 2. It shall be the duty of the several boards of county commissioners of each coun. County comty, at their first meeting after the first day of missioners February next, and annually thereafter, at a treasurer, their first meeting after the first day of Feb- and when,

pointed.

shall appoint

Who shall give bond & security.

Condition of .the bond.

Duty of the treasurer.

Further duty of the treasurer.

Shall settle his accounts annually.

For neglect or malle asance, may be removed from office.

ruary in each and every year, to appoint some respectable citizen, having the qualifications of an elector as county treasurer, who shall give bond and security to the satisfaction of the said board of county commissioners, conditioned for se faithful discharge of the duties of his office, and to account for all monies which may come into his hands as county treasurer, and that he will deliver unto his successor in office all books, papers. documents and other things which he may hold by virtue of his office, and pay him the balance of all monies due to the county.

SEC. 3. It shall be the duty of the treasurer to receive all monies due and accruing to the county by, or in consequence of this act, or any law or act of this state, to pay and disburse the same on orders drawn by the board of county commissioners of the proper county, attested by their clerk, and not otherwise; the said treasurer shall keep a just and true account of all monies received and disbursed, and hold and keep the same at all times ready for the inspection of said boad of county commissioners, and shall at every term of said board furnish them with a statement thereof. balanced to the first day of said term, shewing all the monies received and disbursed by him since his appointment or since his last settlement, and the balance remaining in his hands, together with the arrearages of taxes in the hands of the collector; and shall moreover, once in every year settle his accounts with the said board of commissioners, and produce his vouchers, which being allowed, shall be cancelled by them and 'retained and filed by the clerk of said board of commissioners. The county treasurer shall be subject to be removed. from office by the commissioners of the respective counties, for neglect or miscenduct in office; and in case of the death, removal from office, or removal from the county of any county treasurer, the commissioners of such county or any two of them are hereby authorised and required to appoint some suitable person to fill

said office in his place.

SEC. 4. That hereafter, any person or per- person wishsons within or coming to this state, being the ing to vend owner or possessor of any species of merchan-merchandize dize, not the product or manufacture of the manufacture United States, and wishing to dispose of the or growth, same or any part thereof, shall, previously to shall pay to selling or otherwise disposing of the same or county treasany part thereof, either by himself or his a- tain rates. gent within this state, or on any of the waters within or bounding the same, pay to the county treasurer of the county in which he, she, or they may wish to dispose of the said merchandize, the sum of seven dollars & fifty cents for three months, twelve dollars for six months, sixteen dollars for nine months or twenty dollars for twelve menths, at the option of the applicant; and the said treasurer, upon the receipt of either of the said sums, for either of Treasurer the periods above stated, shall give to the per- shall receipt son the same, a receipt for the amount so paid, stating for what purpose; and the person obtaining such receipt shall deliver the same to the clerk of the board of commissioners; which receipt the said clerk is hereby required to file in his office, and to charge the county treasurer with the amount thereof, in a book to be kept by him for that purpose, and to Clerk shallisgive the person delivering such receipt, a licence, in form following:

State of Indiana County sct.

A B having this day produced to me the dollars. Form thereof county treasurer's receipt for he, she or they, (as the case may be) is or are hereby authorized to vend merchandize in this state, or on any of the water courses thereof or binding thereon, for and during the term of

months from the day of Which licence shall authorise the person chtaining the same to vend by retail agreeably to the laws of this state, or otherwise dispose of

stre a licence.

.any and every species of merchandize during the time stated in the same and no longer; and

if any person shall presume, by himself, her-

menalty on those presuming to sell without licence.

self or themselves, his, her or their agent or agents, to sell or otherwise dispose of any species of merchandize not the growth or manue facture of the United States, within this state, or on any of the waters within or bounding the same, without having first obtained a licence as aforesaid, he, she or they so offending, shall, for every such offence, forfest and pay the sum of fifteen dollars, to and for the use of the county in which the offence may be committed, to be recovered by action of debt, by and in the name of the county treasurer, before any justice of the peace in the county; and it is hereby made the duty of the said treasurer to sue, (or any other person in his behalf may sue) therefor, recover and receive the same, to be applied to and for such purposes as may be by law directed, consistent with the constitution of this state: Provided however That nothing in the fourth section of this act shall extend to embrace any person who shall have obtained a cerificate from the sheriff under the existing laws, for the purpose of vending merchandize, or to prevent such person

Treasurer shall sue therefor,

of commissioners.

of such certificate. SEC. 5. It shall be the duty of the clerks of Daty of cl'ks the several boards of county commissioners to of the boards keep fair books, wherein shall be kept the accounts of the county, attest all orders issued by the board of commissioners for the payment of money, and enter the same in numerical order, in a book to be kept for that purpose, and copy into their said books the report of the treasurer of the receipts and disbursements of their respective counties; and whenever the duplicate shall be put into the hands of the sheriff for the collection of county levies; it shall be their duty to send a statement of the

from vending the same agreeably to the tenor

same wherewith he stands charged to the county treasurer.

SEC. 6. It shall be the duty of each and ev- Fines and ery justice of the peace, clerk or sheriff with- for incres, shall be paid in this state, to pay over according to law, to over to the the treasurer of his proper county, all such county treass' fines and forfeitures which he may have re- urer. ceived for the breach of any of the penal laws of this state; and the treasurer shall give the person paying such money a certificate authorising the clerk of the board of county commissioners to give in exchange for said certificate a receipt for the said money; and it shall be the duty of the person receiving such certificate, within ten days after receiving the same, to deliver it to said clerk, otherwise it shall be of no force or effect, nor admissible in any court whatever; and whenever such certificate is lodged with the said clerk, within ten days Duty of the from its date, then, and in that case, the clerk clerk, shall give to the person entitled, a receipt for the amount paid in as aforesaid to the county treasurer, and charge the treasurer with the same, and file the certificate in his office; any justice of the peace, sheriff or clerk, who shall fail to comply with the foregoing provisions, justices, shall forfeit and pay a sum not exceeding fif- sheriffs and ty dollars, to be recovered by indictment in a- clerks. ny court of record within the countywhere such offence shall have been committed.

Sec. 7. All taxes arising from tavern licen- Taxes from ces or otherwise, shall be paid to the county tavern licentreasurer, in like manner as is prescribed in ces, paid to county treas the foregoing section of this act.

Sec. 8. It shall be the duty of the several clerks of the circuit courts in the several counties in this state, to make out a statement of the Duty of the last settlement of the sheriff of their respec- circuit courts tive counties, and of every preceding sheriff of such county, who shall not have fully settled up his accounts, for monies, funds, balances of money, belonging to the county, and file ed in their officer and also a first of all tokes or

penalty on

clerks of the

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other county craims, assessed by authority of the court, for county purposes, county court or court of common pleas, since the last settlement with the present sheriff of said county. or with any of his predecessors, up to the time of the appointment of county treasurer established by this act, distinguishing what portion of such taxes and public claims has been put into the hands of the present sheriff for collection, and what put into the hands of any former sheriff or sheriffs since the last settlement ef public monies of such county, by the court, for county purposes, county court, or court of common pleas, with the present or preceding sheriff of such county.

conaity on clerks lailing to perform " certain duties

Sec 9. The clerks of the circuit courts shall make out the statement required of them by virtue of this act and deliver the same, together with the names of the securities of every preceding delinquent sheriff to the county treasurer of their respective counties on or before the first day of August next ensuing, under a penalty not exceeding fifty dollars, recoverable by indictment.

Sh'ffs shall es to county treasurer.

SEC. 10. It shall be the duty of the present and former sheriffs of the several counties in pay over tax- this state to pay to the county treasurer of their respective counties on or before the first day of May next, the amount of all the taxes which shall have been put into his or their hands for collection by virtue of the existing laws of this state, and for which they have not accounted and settled with the court, for county purposes, county court, or court of common pleas, of their respective counties.

Treasurer shall notify delinquent sheriffs.

Sec. 41. That so soon as the county treas: urer of any court shall have received from the clerk of the circuit court a statement of the amount of taxes put into the hands of the sheriff of his county or of any of his predecessors, and which shall not have been accounted for with the court for county purposes, county court, or . court of common pleas of such county, in conformity to the tenth section of this act, it shall be the duty of such county t easurer, forthwith to notify such sheriff or sheriffs, their executors, administrators, (as the case may be) that he will move against him or them at the next ensuing circuit court, for such delinquencies; which notice shall be as follows:

Form of notice.

To A B, sheriff of county, or late sheriff or security, administra or or executor of A B, tate sheriff, as the case may be) take notice, that I shall on the day of our next circuit court move for a judgment of said court against you for failing to pay into the county treasury of said county the taxes due the said county by you (or A B, as the case may be) for the year of as the case may day of be

C D, County Treasurer.

Which notice, being served ten days pre- Notice to be vious to the sitting of the court, the court shall served ten proceed to hear and determine the case, and days prior to give judgment for whatever sum appears to be the court. due the said county by said sheriff, together with costs; which judgment shall be in the name of the county treasurer, for the use of the county: Provided however, that should there appear to be nothing due on a final hearing of the case by any such sheriff or sheriffs, he or they shall nevertheless pay the costs of suit for failing to settle his or their accounts in due time, according to law.

SEC. 12. The county treasurer shall have for his services two and a half per centum for Allowance to all monies received, and two and a half per treasurer. centum for all monies paid out for the county.

SEC. 13. It shall be the duty of the prosecuting attorney of the county to aid in the pro- prosecuting ceeding by the county treasurer against any atorney shall sheriff for the non payment of what sums of ad and assist money shall be due the county, as is directed in the eleventh section of this act.

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CHAPTER XLV.

AN ACT to establish and regulate ferries.

APPROVED-December 31, 1817.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That the several boards of county commissioners, with-County com- in this state shall be and are hereby empowmissioners to ered to establish public ferries across those rivers or creeks, bounding or within their respective counties, whenever they shall deem it necessary, on due application to them made: Provided however. That no such ferry shall be established, unless the person making such of the adjoin- application be the proprietor of the land ou that side of such river or creek on which he wishes to have such ferry established; Provided, That nothing herein contained shall be so construed as to authorize the board of conuty Proviso in fa- commissioners to grant a ferry within one mile, vor of estab- immediately below or above a regular established ferry, unless they shall deem it important for the public convenience, or the intervening of a town, village, public highway, or the putting in of some impassable creek or ravine.

lished ferries

establish for-

Proviso in fa-

vor of owners

ing soil.

ries.

How ferries may be estabter courses dividing counties.

To whom a ferry may be granted in case the land water course be a public common.

SEC. 2 When any river or creek shall be the bounday line between two counties, and lished on wa- any person owning lands on either side of the said river or creek, shall wish to have a public ferry across the same, he or she shall apply to the board of county commissioners of the county in which his or her land lies, who are hereby authorized to establish such ferry, from the land of such person to the opposite side.

SEC. 3. Where the land bordering on any creek or river, across which a public ferry is deemed necessary to be established, shall be a adjoining the public common for any town, the board of county commissioners for the county are hereby authorized to establish ferries across such river or creek, on application of any person owning land next adjoining such public common under the same rules and restrictions that ferries are established to persons owning land bordering on such river or creek.

SEC. 4. No application shall avail any per- previous toan son wishing to establish a public ferry across application any river or creek, unless he shall have pre- for a ferry 60 viously advertised his or her intentions, relative thereto, at three of the most public places en. of the township in which such ferry is proposed to be established, at least thirty days.

SEC. 5. If any person shall think him or greeved way herself aggrieved by the establishment of a appeal to co public ferry bythe board of countycommissioners under this act, he or she shall have the right of appeal to the Circuit Court of the proper county.

SEC. 6. The rates of ferries shall be fixed Rates of toll, by the board of county commissioners, at the how fixed. time of establishing the same, and from time

to time as they shall deem proper.

Sec. 7. If any ferry keeper, shall demand Ferryman lie or take from any person a greater sum for the able to a penferriage than is allowed by the board of com- altyfor extormissioners, such offender shall forfeit and pay tion. upon indictment or presentment, any sum not exceeding forty dollars, to be appropriated as other fines are.

SEC. 8. The board of county com'rs for the county wherein a ferry is or shall be established, shall have and is hereby declared to have They are to authority of ordering and directing, from time give bonds.toto time, what boat or boats, and the number the C. Com's of hands, which shall be kept at each ferry for the faithrespectively; and the owner of the land ance of duty. whereon such ferry shall hereafter be established, shall, within three months from the establishment of such ferry, execute a bond to the board of county commissioners, with one or more securities, to be approved of by the board of county commissioners, in the penal sum of five bundred dollars, conditioned that he or she will keep such ferry or cause the same to be kept according to law, and that he

or she will give passage to all public messengers and expresses, when required, without fee or reward for the same, from time to time; which bond shall be filed with the clerk of the board of county commissioners, to be proceeded on in the same manner as other public bonds for the breach of the condition thereof; and in case any such person shall neglect or refuse to give such bond, he or she shall forfeit his or her right to said ferry.

deemed publie masengers and transported gratis.

Ferrymen's

duties

SEC. 9 All expresses sent on public ser-Who shall be vices by a Commander in Chief, Colonel or Major, to the Governor for the time being, or commanding officer of the Militia, shall be accounted public messengers and expresses, and shall pass ferry free, within the condition and meaning of the bond aforesaid, in case the dispatch carried by such express be endorsed on "public service," and signed by the person sending the same.

> SEC. 10. Each and every ferry keeper shall keep a good and sufficient boat, or boats if more than one be required, with a sufficient number of good and skilful ferrymen, and give due attendance to the said ferry or ferries, and the transportation of all persons with his or their property, who shall apply for the same during the day time, that is to say; from day light in the morning until dark in the evening, that no unnecessary delay may happen to persons having occasion to use the same:-Provided always, that all ferry keepers shall be obliged at any hour in the night, if required, except in case of evident danger, to give passage to all expresses above recited. and to all other persons requiring the same, on their tendering and paying double the rate of ferriage, allowed to be taken during the day time, and that from and after thirty days after this act shall take effect, it shall be the duty of all ferry keepers within this state to cause the banks of the river or creek, to be dug suf

aciently low and shall be kept in good passable order for the passage of man and horse and loaded waggons, under the penalty of five dollars for each and every days neglect of the banks of his ferry, to be recovered by indictment or presentment.

SEC. 11. And for encouraging ferry-keepers, and in consideration of setting over public messengers, and the persons exempted by this

Be it enacted, That all men, while necessarily employed in attending on ferries in this Ferrymen ex state, shall be free from militia duty, impress- empted from ments, opening and repairing roads and high- the performways, so far as personal service is required, tain duties. and from serving on juries; and if any person or persons other than ferry keepers, licenced as aforesaid, shall, for fee or reward, set any person over any river or creek, where public any other per ferries are established, at any place within two son than a miles of such public ferry, he, she or they so ferryman for offending shall forfeit the sum of three dollars reward, a pen for every such offence, to be recovered before any justice of the peace for the county wherein such offence was committed, in the same manner that other fines are recovered for the breach of the penal laws of this state: Provided, That nothing herein contained shall be so construed as to exempt ferry men from militia duty in times of war and public danger.

SEC. 12. If any ferry or ferries which now are or may hereafter be established, shall not be furnished with the necessary boat or boats and ferry-men, within the space of six months after the establishment thereof, or shall at any How a ferry time thereafter, wilfully neglect to attend to the may be dissame, it shall and may be lawful for the board contined for of county commissioners of the county wherein proprietor. such ferry or ferries shall be, on complaint to them made, to cause to be summoned the proprietor or proprietors of such ferry, to shew cause at the next meeting, why it should not

The transportation by

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be discontinued. and to decide according to

the testimony adduced.

SEC. 13. All acts and parts of act heretofore in force, regulating and establishing ferries, shall be, and the same are bereby repealed: Provided nevertheless, That this act shall not be so construed as to annul, make void or vacate any ferry heretofore established according to law.

This act to take effect from and after its pub-

lication.

CHAPTER XLVI.

AN ACT, Supplemental to an act to regue late and establish Ferries.

APPROVED-January 24, 1818.

BE it enacted by the General Assembly of the State of Indiana, That nothing in the third section of the act, to which this is a supplement, shall be so construed as in any wise to affect any town or corporation, or the right of any person or persons, proprietor or proprietors of any town, their heirs or assigns by giving the right of establishing a ferry or ferries to any person or persons, who are not proprietors of the land on the margin of the river or creek: Provided, The corporation of such town, or the proprietor or proprietors of such land keep up a sufficient number of ferries across such river or creek.

Provision in favor of proprietors of in corporated towns.

CHAPTER XLVII.

AN ACT to licence and regulate taverns.

APPROVED-January 28, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That if any

person or persons shall, within the jurisdiction of this state, barter or sell by retail any spirituous or strong liquors to be drank in his or her house, out house, yard or garden, or seiling withshall sell any of the aforesaid liquors by a less quantity than a quart at a time, without obtaining a licence from the board of county commissioners, as is herein provided, every person so offending, shall forfeit and pay for every such offence, the sum of three dollars.

SEC. 2. The board of county commissioners at any of their meetings, are hereby authorised to licence as retailers of spirituous or strong liquors, every person who shall apply therefor; provided such person so applying shall produce the certificate of twelve respectable house-holders, that such person is of mended. good moral character, and that it would be for the benefit and convenience of travellers for such person to be licenced as aforesaid: Provided also, That such person shall first enter into bond with sufficient securities, (to be approved by the commissioners) in the sum of five hundred dollars, payable to the county treasurer for the time being, or his successor in office, that he or she will not permit any gambling, rioting or disorderly conduct in his or her house, but will conform to the laws of this state, restraining gambling and disorderly conduct about taverns or public houses, and that he or she will not suffer any unlawful assemblies, or sell or retail spirituous or strong liquors on the Sabbath day or first day of the week commonly called Sunday, except to travellers, or do, or suffer any thing to be done, prohibited by the laws of this state, about his or her house; which bond shall be filed in the clerk's office, and if the condition thereof should be forfeited, the circuit court at their next session, on complaint made to them, are hereby authorised to suppress such licence. and it is hereby made the duty of the connit

treasurer to put such bond in suit.

Penalty for

Applicants

To give bond.

year.

When clerk may give per mit.

a retailer of spirituous or strong liquors, until such person shall pay the amount required by law for such licence, nor shall any licence Licence for 1 continue for a longer time than one year; but where there is no complaint of disorderly conduct, the commissioners may grant a new licence without the certificate as aforesaid, and in the recess of the meetings of the commissioners, their clerk may give a permit to any person applying to retail spirituous or strong liquors until their next meeting, if such person shall comply with the provisions of this act; but if any person should continue to retail spirituous or strong liquors after his or her licence has expired, he or she shall be subject to the same fine as though he or she had never had a licence : Provided however, Nothing in this act shall be so construed as to prevent any person from selling spirituous or strong liquors by the quart or gallon, when such spirituous or strong liquors is not to be drank in his or her house, out house, yard or garden.

Sec. 3. Nothing in this act shall be so cons strued as to entitle any person to a licence as

ers shall be

dollections.

SEC. 4. If any person or persons shall self or barter to any minors, apprentices or serselling spir- vants, any strong or spirituous liquors, knowits to minors. ing or having reason to believe he or she is such, without the consent of his or her parents or parent, master or mistress, such person so offending shall, for every such offence, forfeit and pay the sum of three dollars.

SEC. 5. If any retailer of spirituous or strong liquors shall sell on credit to any person ex-When retail- cept travellers, spirituous or strong liquors to a greater amount than five dollars, he or she shall not have the benefit of the laws of this without remedy toenforce state to enforce the collection of his or her debt for such sum so due for spirituous or strong

SEC. 6. If any retailer of spirituous or strong liquors shall sell or dispose of any intoxicating liquors to any person in a state of intoxication, believing, or having reason to believe that he or she is in a state of intoxication, he or she so offending, shall forfeit and pay for every such offence, the sum of three dollars, cated. And all fines imposed by virtue of this act shall be collected by any justice of the peace, being informed thereof, in the proper township, with costs of suit, for the use of county seminaries.

SEC. 7. It shall be the duty of the county commissioners at their first or any other session yearly and every year, to fix the tavern rates, having the same recorded with their other proceedings, and when any person is licenced to keep a tavern agreeably to the provisions of this act, they shall cause their clerk to furnish to such tavern keeper, a distinct and fair list of such rates; which person so licen. Tavernkeepced. shall thereupon cause the same or a copy thereof to be set up in the most public room in his or her house; and any person selling at higher rates than are allowed by the commissioners, shall, for every such offence, on conviction thereof before a justice of the peace, be fined not exceeding three dollars. And the clerk for every copy of such rates, shall be allowed twenty-five cents, to be paid by such tavern-keeper.

Penalty for selling to per sons intoxi-

CHAPTER XLVIII.

AN ACT regulating the mode of summoning and empanneling Grand and Petit Jurors.

APPROVED-January 28, 1818.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That it shall be the duty of the county commissioners in each and every county in this state, at the meeting in each and every year, when they receive

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whom petit jurers shall be selected

Their names to be deposited in a box

Grand jurors how selected

jurors' names when to be drawn.

When and by the lists of taxable property for county and state purposes, to select seventy two discreet house-holders from said list, each of whose names shall be written on separate pieces of paper and put into a box, which shall be by the said commissioners procured and kept for that purpose.

> SEC. 2. It shall be the duty of the commissioners, so soon as their clerk shall have finished putting the names in the box, forthwith to proceed to select out of t e list aforesaid, three grand juries to consist of eighteen men each, and mark on the back of each name, "Grand Jury." and put them when so selected and marked, into a box, which shall be by them the said commissioners procured, and by the clerk of the circuit court kept for that purpose.

> SEC. 3. It shall be the duty of the clerks of the several circuit courts in this state respectively, at least thirty days previous to the sitting of each of the circuit courts in and for their respective counties, to draw indiscriminately out of the box in which the names of the petit jurors are deposited, two complete petit juries to consist of twelve men each, and when he has so drawn them, he shall insert their names in a proper writ directed to the sheriff of his county, commanding the sheriff to summons the persons named in such writto appear on the first day of the term of the circuit court to be holden in and for said county, then and there to serve as petit jurors for and during said term; and it shall also be the duty of such clerk at the same time, to draw indiscriminately out of the box in which the names of the grand jurors as aforesaid are deposited, eighteen names and insert them in a proper writ, directed in the same manner as directed in case of petit juries by this section.

> Sec. 4. Each and every person who shall be summoned as a grand or petit juror under the provisions of this act, who shall, after six

days notice by the sheriff, neglect or refuse to attend, shall be fined in any sum not exceeding three dollars, at the discretion of the circuit court, on the motion of the prosecuting at torney, notice having first been given by scire facias or attachment to the offending party, at least ten days previous to the making of such motion. Nothing in this act shall be construed as to prevent jurors from being obtained, as at common law, to make up any deficiency, provided they shall not attend under the provisions of this act.

This act shall take effect and be in force from and after its publication.

CHAPTER XLIX.

AN ACT to prevent waste on lands reserved for the use of Schools and Salt Springs.

APPROVED-January 29, 1818.

Sec. 1. BE it enacted by the General Asembly of the State of Indiana, That the board of commissioners of each county in this state, are hereby authorised and directed, at their first term to be holden after the first day of Web ruary next, or at any time thereafter, to appoint some fit person, resident in each congressional fractional township, in which a sec- sections aption of land is reserved for the use of schools, pointed. as superintendant of the school section in such township: Provided however, That if there should be no fit person resident in any such township, then the superintendant shall be appointed in some other township most convenient thereto; and whenever a part of a congressional township shall be in one county and part in another, the appointment of the superintendant shall be made by the commissioners in the county where the greatest part of such school section lies:

Penalty on jurors for fais ling to obey summons.

ants of school

To take

SEC. 2. It shall be the duty of the superiatendant to take special charge of the section charge of and intrusted to his care, and if no improvement lease said sec shall have been made thereon by virtue of any existing contract, he may lease such section or any part thereof to the best advantage, for the benefit of the inhabitants of said township, for any term of time not exceeding nine years, taking bond in his own name with sufficient security as superintendant, for the performance of the contract and preservation of the timber: Provided, there shall not be more than one lessee on each quarter section.

Sec. 3. If any lands are now or shall be hereafter cleared by any existing contract on such section, he shall after the expiration of proved lands. such contract, rent such cleared land from year to year for any term not exceeding three years, for the best price that can be had, and shall take bond in his own name as superintendant, for the use of the inhabitants of said township, with sufficient security from the person or persons renting the same, conditioned for the payment of the rept and the preservation of the improvement and timber thereon, except such as may be necessary for the use of the farm.

Shall presecute those who commit waste.

Sec. 4. If any person or persons, having leased any of the lands aforesaid reserved for the use of schools, shall commit any waste thereon, or shall cut down, or in any way injure or destroy, or make use of any more timber than may be necessary for the purposes specified in the lease and in conformity thereto, he or they so offending shall be prosecuted by such superintendant or trustees, as herein after mentioned, before any court of competent jurisdiction, for the damages sustained. Each superintendant shall hold his appointment for two years, unless superseded by trustees as herein after mentioned, and in such case he shall deliver to his successor in office or trustees aforesaid, all money or papers he

may have relative to his office, and shall receive for his services such compensation as the board of commissioners may deem reason-

Sec. 5. Whenever twenty house-holders. Inhabitants inhabitants of any congressional or fractional township, in which a section has been reserv- ship may be ed for the support of schools shall, by petition incorporated, or otherwise, make known to the board of commissioners their desire to be incorporated, it shall be the duty of the said commissioners to direct the sheriff to advertise in at least three of the most public places in said township, an election in said township to elect three trustees one to be designated treasurer of said board, specifying the time and place of holding said election, also to direct the most convenient justice of the peace to attend, who shall take to his assistance two qualified voters, who shall act as judges of said election; and the judges and justice aforesald shall count the tickets and give to each person elected trustee a certificate of his election, and also transmit one to the clerk of the board of commissioners, who shall preserve the same, and the trustees so elected, on taking an oath or affirmation, faithfully and impartially to discharge the duties enjoined on them by law. shall be considered a body politic, in deed and fact, and able and capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, in any court of justice, and shall have full power to make all such byelaws, rules and regulations, not inconsistent with the constitution and laws of this state, as may be necessary for the purpose of encouraging and supporting a school or schools, in said township, and shall hold their offices for three years, and until superseded by others chosen as aforesaid.

SEC. 6 Whenever any vacancy happens Vacancy in board of trusin the board of trustees, by death, resignation tees, how filor otherwise, the remaining trustees or any led:

one of them shall advertise an election to fill such vacancy, which election shall be held and conducted in the same manner as is directed by the fifth section of this act.

Saperintendants appointed by this act.

Gov. to fill vacancies.

Duty of superintendants.

SEC. 7. James Gregory of Orange county is hereby appointed superintendant for the eighth township, north of the base line, range one west of principal meridian, granted to this state by the United States, for the use of a seminary of learning, and Edlei Campbell of the same county is hereby appointed superintendant for the thirty six sections of land situate in range two west, in towns one and two north, generally known by the name of the French Lick, reserved in Orange county; and in case of vacancy in the said superiotendencies or either of them in the election above mentioned, by death, resignation or otherwise, the Governor is hereby authorised to supply such vacancy, and to appoint some fit person as superintendant of any other lands reserved, or which may hereafter be reserved according to law, for the use of salt springs and granted by the general government to this state; which superintendants so appointed by the Governor shall be persons residing as near as may be to the lands which they are to superintend. The said superintendants in this section mentioned shall hold their offices for three years, and until successors may be appointed, and shall take good care of the lands they may respectively have in charge, and grant leases thereon, or any part thereof, by quarter sections or fractional sections, for any term of time not exceeding beyond the year eighteen hundred and twenty as respects the eighth township, and for any term of time not exceeding five years as it respects the said French lick reserve, and the said other lands reserved for the use of salt springs as aforesaid, taking bond and security in their own names as superintendants for the performance of the contract and preservation of the timber, and

pay the proceeds at proper times to the treas urer of the state; and the said lessees of any lands mentioned in this section of the act shall, in case of waste or destruction of timber, be Subject to the same penalties as hereafter mentioned.

SEC. 8. If any person or persons shall bark, bore, cut, or otherwise injure any tree or sapling, not warranted by contract, on any of the persons injulands aforesaid, he or they so offending shall rong timber. pay the sum of five dollars for every tree, and three dollars for every sapling so cut, barked, bored or injured, to be recovered before any justice of the peace in the name of the superintendent, the informer shall be admitted as a competent witness at the trial. Penalties arising from the breach of any of the provisions of this act, where the injury has been done to lands reserved for the use of salt springs or a college township, shall go to the use of the state and in the state treasury by the officer collecting the same, and where the injury has been done to a school section in any congressional or fractional township to the benefit of the schools established in such section and paid by the officer collecting the same into the tion of such county treasury, to be there drawn out upon the penalties. order of the trustees appointed or to be hereafter appointed for such school section.

SEC. 9. The superintendants of the lands mentioned in the seventh section of this act shall receive a reasonable compensation for their services to be determined by the Governor and paid out of any money in the treasury not otherwise appropriated.

All acts and parts of acts heretofore in force relative to the subjects herein contained shall be and the same are hereby repealed. Provided however, That nothing in this act shall be construed so as to affect any appointment heretofore made. This act shall be in force from and after its publication-

Appropria.

CHAPTER L.

AN ACT repealing all laws and parts of laws now in force, directing the mode of changing the venue.

APPROVED-December 20, 1817.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That all laws & parts of laws in this state, granting a change of venue be and the same are hereby repealed.

This act shall be in force from and after its

publication.

CHAPTER LI.

the Ale- frame

AN ACT respecting apprentices.

APPROVED-January 7, 1818.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana. That any person within the age of twenty one years, who now is or shall bereafter be bound by an indenture of his or her own free will and accord, or by and with the consent of his or her father or in case of the death of his or her father, with the consent of his or her mother or guardian to be expressed on such indenture, and signified by his or her parent or guardian by signing and sealing the said indenture, and not otherwise, to serve as apprentices in any art, craft, mystery, service, trade, employment, manual occupation or labour until he or she arrives, males, to the age of twenty one years, and females, to the age of eighteen years, as the case may be, or for any shorter time, shall serve accordingly

Sec. 2. If any master or mistress shall be guilty of any misusage, refusal of necessary provision or clothing, unreasonable correction or other ill treatment, so that his or her ap-

prentice shall have any just reason to complain, then the said apprentice, or some other person for him or her, shall repair to some justice of the peace not a kin to either party, Mode of rewithin the county where such master or mis- apprentice tress resides, and make complaint thereof, is aggrieved? and the said justice of the peace shall upon such complaint of ill treatment on the part of the master or mistress to his or her said apprentice, or ill treatment to the said apprentice from any other person by order of the said master or mistress, recognize the parties in such securities as he may think proper, to appear at the next term of the circuit court to be holden in the county where the parties reside; at which term the court shall hear in a summary way, and determine whether the said apprentice shall be discharged or return to the service of his or her said master or mistress, and in case he or she be discharged, the clerk of the said court shall give him or her a certificate thereof, and the decision of the said court shall in all cases be final and conclusive between the parties.

Sec. 3. Any and every contract or volun- Apprentice tary enlistment hereafter entered into by any incapable to apprentice, during the time of his apprenticeship, shall be, and the same is hereby declar- ticeship.

ed absolutely null and void. Sec. 4. It shall and may be lawful, in case the apprentice deserts or absents himself or herself from the service of his or her master or mistress, or hides or secretes himself or her- How the mas self, for such master or mistress to advertise ter may rein some newspaper, offering and giving a reading apprensonable reward for the apprehending and tice. bringing back the said apprentice; and in those cases, where he or she absents himself or herself, and openly runs at large, the master or mistress may cause 'and have a warrant issued against him or her, by any justice of the peace of the county, directed to the constable or other civil officer, to bring the body of the

M M 30

time & purposes, and in what manner apprentices shall be bound.

For what

said apprentice forthwith before him, upon the production whereof, to order him or her to return into the said service of his or her said master or mistress; but should be or she refuse to return therein, then to commit him or her to the common jail of the county, there to remain until he or she shall so consent: Provided however, That the said apprentice may appeal to the next circuit court, by entering into recognizance with sufficient surety to appear at and abide the decision of the said court, who shall hear and decide as is provided in a foregoing section of this act.

to remunerter for time lost, &c.

Sec. 5. Any and all time wilfully lost by Apprentice an apprentice, shall be by him or her returned day for day to his or her master or mistress, ate the mas- at and upon the expiration of his or her indentures, and all reasonable costs and charges to which any master or mistress may be put by his or her apprentice in apprehending or regaining him or her, shall be repaid him or her by the said apprentice at and upon the expiration of his or her apprenticeship.

Former laws repealed.

Sec. 6. All laws and parts of laws heretofore in force concerning apprentices, be, and the same are hereby repealed.

This act to take effect from and after ite publication.

CHAPTER LII.

AN ACT declaring what Laws shall be in force.

APPROVED-January 2, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That the Common Law of England, all statutes or acts of the British Parliament made in aid of the Common Law, prior to the fourth year of the reign of King James the first, excepting the segoud section of the sixth chapter of forty-third Elizabeth, the eighth chapter, thirteenth &lizabeth, and ninth chapter, thirty seventh the statutes Henry Eight, and which are of a general na- of G. B. priture, not local to that kingdom, and not incon- or to the 4th sistent with the laws of this state; and also, of James 1st the several laws in force in this state shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

law of Eng &

CHAPTER LIII.

A.N ACT repealing an act, providing a sum. mary mode of collecting debts in certain cases.

APPROVED-December 31, 1817.

SEC. 1. BE it enacted by the General As, embly of the State of Indiana, That the act, entitled "An act providing a summary mode of collecting debts in certain cases," approved, September 6th, 1814, be, and the same is hereby repealed.

This act to take effect and be in force from

and after its publication.

CHAPTER LIV.

AN ACT defining and regulating privileges in certain cases.

APPROVED-December 31, 1817.

SEC. 1. BE it enacted by the General As- When memsembly of the State of Indiana, That the mem- bers of the G bers of the General Assembly of the state of A. and the of Indiana and the secretaries, clerks, serjeant ficers thereof at arms, door keepers and messengers of ei- arrest. ther branch of the General Assembly of this

state shall be privileged from arrest during the sitting of the Legislature or either branch thereof to which they respectively belong, and also during the time, necessarily employed, in travelling to and returning from the place of their meeting, allowing one day for every twenty-five miles of the distance of the road most usually travelled; and all proceedings in suits pending, in which either of the persons above mentioned is a party, shall be stayed during the time aforesaid; and whoever shall arrest either of the persons above mentioned, during the time they are entitled to privilege as above provided, shall forfeit and pay for every such offence, the sum of one hundred dollars, to be recovered with costs of suit, by action of debt, for the use and in the name of the person injured; and all persons legally entitled to vote for representatives to the General Assembly, shall be privileged from arrest during the time of their attendance at elections, and while on the way of going to and returning from such elections.

Sec. 2. The judges and clerk of the supreme court shall be privileged from arrest while attending on the court and during the space of fifteen days next before the commencement, and for the space of ten days after the

close of any term thereof.

SEC. 3. The judges of the several circuit courts within this state, during the sitting of their respective courts, and during the space of forty-eight hours next before the commencement and the like space next after the close of any term thereof, and each member of the board of county commissioners for the space of forty-eight hours before any of their regular and legal sessions, during the time employed in said session, and forty eight hours after the close thereof, and the justices of the peace, while engaged in hearing and determining any action, suit or plaint, instituted before them

or either of them, and all attornies and

Electors on days of election privileged from ar-Judges and

Judges of C. C.& C. Comm'rs. free from arrest.

clerks of S. C

session there-

days preced-

ing and suc-

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counsellors at law, clerks, sheriffs, coroners & all officer's and cryers, and all suitors, witnesses and ju- & suitors rors, while attending court, and while going ing court. to and returning from court, shall be privileged from arrest.

Sec. 4. No person shall be arrested while doing militia duty under the order of his com- All persons manding officer, or while going to or returning from the place of duty or parade, nor shall any person be arrested on the first day of the duty, &c &c. week, commonly called Sunday, nor in any place of religious worship, during the performance of divine service, or in the chamber of the legislative body of this state during their sitting. or in any court of justice during the sitting of the court, or on the fourth day of the month of July, the anniversary of American independence. Provided however, nothing in this act Proviso relacontained, shall be so construed as to prevent five to disany person from arrest, if he shall disturb or ligious wormolest any religious congregation in worship, ship. or any individul thereof.

SEC. 5. Nothing herein contained shall be so construed as to extend to cases of treason, felony, or breach of the peace; Provided always, not embracthat where either of the members or officers of the General Assembly, shall be arrested during the sitting of the legislature, upon any ing to the charge of treason, felony or breach of the G.A during peace, it shall be the duty of the person issue its session&c. ing the process on which the arrest is made, forthwith to give written notice thereof to the house in which the person arrested shall be a member, addressed to the President or Speak-

er, as the case may be.

SEC. 6. Nothing herein contained shall be construed to privilege any person herein nam. When some ed from being served any time. Sundays and mons may be the fourth of July excepted, with a summons or notice to appear. And all arrests, not contrary to the provisions herein contained, made in any place, on any water course or river within or bounding on this state shall be deem-

while attend-

shall be from arrest while doing militia

turbers of re-

ed in this act.

proviso rela-

ted, how discharged.

ed lawful. And if any person shall be arrested, contrary to the provisions herein contained, such person may and shall be dischar-A person il- ged by a writ of habeas corpus or in a sumlegally arres- mary way, by motion before the court from which the process shall have issued, at the cost of the party suing out such process.

All acts or parts of acts, heretofore in force on the foregoing subjects are hereby repeal-

ed.

CHAPTER LV.

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AN ACT for rendering authentic as evidence in the courts of this state, the public acts, records and judicial proceedings of courts of the United States.

APPROVED-January 10, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That every act of the Legislature of any one of the United States, or any of the territories of the United States, certified by the Secretary, and having the seal of such State or Territory aftive acts shall fixed thereto, shall be deemed authentic, and be certified. receive full faith, and credit, when offered in evidence, in any court of justice within this State.

How legisla-

SEC. 2. The records and judicial proceeding of the several courts of or within the United States or the Territories thereof, shall be admitted in the courts of justice in this state, by the attestation or certificate of the shall be certi- clerk or prothonotary and the seal of the court annexed, together with the certificate of the chief justice or one or more of the judges or the presiding magistrate of either such court, as the case may be, that the person who signed such attestation or certificate was at the time of subscribing it the clerk or prothonotary of such court, and that such attestation is in due form of law; and the said records and judicial proceedings, authenticated as aforesaid, shall have full faith and credit given to them, in any court within this state, as by law or usage they have in the courts of the United States, or any one of the States and Territories, whence the said records are or shall be taken.

Sec. 3. This act to be in force from and after its publication.

CHAPTER LVI.

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AN ACT to improve the breed of horses.

APPROVED—December 31, 1817.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That it shall and may be lawful for any person or persons to take up and geld, at the risk of the owner any stoned horse, of the age of eighteen months and upwards, that may be found running at ting horses large, out of the enclosed ground of the own- running at er or keeper, and if the said horse should happen to die, he shall have no recourse a- 18 months gainst the person or persons who shall have so shall be paid taken up and gelded the said horse, and the \$1 for their owner of the said horse shall moreover pay to the said person who has so taken up and gelded the said horse, or caused it to be done, the sum of one dollar, to be recovered before any justice of the peace of the county.

Sec. 2. It shall not be lawful for any Mode of properson or persons to geld any horse a- king a horse bove fourteen and one half hands high, that of the height is known to be kept for covering mares, but if of 14 1-2 any owner or keeper of a covering horse shall hands if wilfully and negligently suffer said horse to known as a run at large out of the enclosed lands of the horse,

Any person taking up & castras large over the age of

How judicial proceedings tified.

owner or keeper any person may take up said horse and carry him to his owner or keeper, for which he shall receive two dollars, recoverable before any justice of the peace of the county, for a second offence double the sum, and for a third offen e said horse may be taken and gelded, as is provided in the first section hereof.

CHAPTER LVII.

AN ACT to prevent certain immoral prac-

APPROVED-January 3, 1817.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That if any person of the age of fourteen years or upwards ged 14 years shall be found on the first day of the week. commonly called Sunday, sporting, rioting, quarreling, hunting, fishing, shooting, or at common labor, "work of necessity and charity only excepted." Any person so offending, shall be fined in any sum not exceeding three dollars, nor less than one dollar for every such offence; Provided, That nothing herein contained, shall be so construed as to extend to those who conscientiously do observe the seventh day of the week as the Sabbath. nor to prevent families emigrating, from travelling, superintendants or keepers of toll bridges. from attending on and superintending the same, watermen from landing their passengers, or ferrymen from conveying over the waters travellers or persons removing with their families on such days.

Tavern keep ers &cc. not to sell spirits on sunday.

Persons a-

&c. fined for

Sabbath

Proviso.

breaking.

SEC. 2. If any tavern keeper or other person shall sell or barter any spirituous liquors. on the first day of the week, commonly called Sunday, (except to travellers) such tavern

keeper or other person so offending, shall be fined in any sum not exceeding three dollars.

SEC. 3. If any person shall at any time in- Persons disterrunt, molest, or disturb any religious soci- turbing reliety or any member thereof, when meeting or gious sociemet together for the purpose of worship or of performing any other duties enjoined on or appertaining to them, any person or persons so offending may be arrested and carried before any justice of the peace in the township wherein such offence shal! have been committed, and fined in the sum of three dollars

SEC. 4. If any person of the age of fourteen years or upwards, shall profanely curse, damn Profane or shall profanely swear by the name of God, swearing how punish Jesus Christ or the Holy Ghost, each and ev- ed. ery person or persons so offending shall be fined in any sum not more than three dollars, nor less than one dollar for every such offence; provided the fines imposed on any one person in any one day shall not exceed ten dollars.

Sec. 5. If any person or persons shall be persons mafound making or exciting any contention or king or excidisturbance at any tavern, court, election or o- ting disturbther meeting of the citizens for the purpose of ances at any transacting or doing any business appertaining private place to, or enjoined on them, each and every per- punished. son so offending shall be fined in any sum not exceeding three dollars nor less than one dolfar for every such offence.

Sec. 6. If any person or persons shall play bullets along or across any highway or in any horse racing, street of any village or town within this state, and shooting or run horses, or shoot at mark within the lim its of any such town, village or high-way, every person or persons so offending, for each and every such offence, shall be fined in any sum not more than three dollars nor less than fifty cents.

Sec. 7. If any person or persons shall ex- puper sheres hibit any puppet shew, wire dancing or tumbling within this state, and shall ask or receive any money or other property for exhibiting

Proviso.

prohibited.

wire dancing and tumbling

N N 40

when commenced. Fines paid in to county when.

SEC. 8. All prosecutions under the provisprosecutions ions of this act, shall be commenced within 10 days after the offence or offences shali have been committed, & all fines collected under authority of said act, shall be by the officer coltreasury, and lecting the same, paid into the county treasury within ten days after the said fine shall have been collected.

Duty of associate judges and justices of the peace.

Shall issue warrant, on information on oath.

Duty of sheriffs, coroners & constables.

Officers failing their duty, fined.

Sec. 9. In order to carry the provisions of this act into execution, it is hereby made the duty of all associate judges of the circuit courts and justices of the peace within their proper counties, and they are hereby severally authorised and required upon their own view to proceed against and punish every person or persons offending against the provisions of this act, or on information made on oath or affirmation, shall issue a warrant to bring the accused forthwith before him, and shall in a summary way enquire into the truth of the accusation, and if found guilty, shall enforce the penalty of this act annexed to this offence. It is hereby made the duty of all the sheriffs, coroners and constables to prosecute all offenders against the provisions of this act that may come within their knowledge; every officer whose duty it is made to carry the provisions of this act into execution, and shall fail so to do, shall be subject to an indictment and be fined in any sum not exceeding one hundred dollars for every such neglect, to be recovered before any court having competent jurisdiction.

CHAPTER LVIII.

AN ACT regulating grist mills and millers.

APPROVED-January 29, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That each and every miller or the owner or owners or occupiers of every water and wind grist mill now erected, or which shall hereafter be erected and built within this state, shall be entitled to have and receive out of the grain which be ground in his her or their said mills, the following rates of toll, in full compensation therefor, (to wit:) For grinding and bolting wheat or rye into flour, one eighth part thereof; for grinding Indian corn, oats, barley or buck- Rates of toll. wheat, one eighth part thereof; for grinding malt and chopping rye, one tenth part thereof; and steam mills, when they grind for toll, the same rates.

SEC. 2. If any miller or the owner or occupier or occupiers of any of the aforesaid described mills, within this state, shall presume to demand, receive or take any greater toll penalty forta fee or reward for grinding grain, or for grind- king illegal ing and bolting grain into flour than as afore- toll. said, or shall knowingly cause the same to be done, he, she or they so offending, upon conviction thereof before any justice of the peace of the proper county, in which the mill shall have been erected, shall forfeit and pay the sum of five dollars, with costs of suit, for every such offence, and shall moreover be liable to the action of the person injured for dama-

Sec. 3. The owner or owners or occupiers of every grist mill of the aforesaid description, shall be accountable to the owners of grain countable for received to grind, for the safe keeping of the losses. same whilst in his, her or their mills ; and if any grain, bag or cask containing the same

shall be lost or destroyed whilst intrusted to the care of any miller for the purpose of being ground, the owner or occupiers, as the case may be, shall make good the same to the owner thereof: provided always, That in order to entitle any owner of grain so deposited and lost or destroyed, to recover the value thereof against the owner or occupier of any of the above described mills, the owner of the grain shall cause the bags, cask or casks containing his, her or their grain to be distinctly marked with the initial letters of his, her or their name or manes : provided also, That nothing in this section shall be so construed as to charge any owner or occupier of any mill with the loss of grain, bags or casks that shall happen by robbery, fire or any other unavoidable accident, without, the fault or neglect of such miller, owner or occupier thereof.

Sec. 4. It shall be lawful for any person in this state, who shall be owner of a grist mill or saw mill or other water works, and who has a dam across any water course, for such owner as far as the water is caused by said dam to be backed up said water or stream, and the water has or is about to wash a channel so as to turn said stream from above the dam, below the same to erect such fortifications as he may think proper to prevent the water from cutting or washing a channel upon the edge of such stream, as far as the water is caused by said dam to be backed up said

stream.

SEC; 5. All millers, when the owner or occupiers grind for toll, shall well and sufficiently grind the grain brought to their mills, and in due time as is brought, and may take for toll such part as is herein before directed; and every miller failing to grind as aforesaid, as the same shall come in turn, or take or exact more toll, shall for every such offence, forfeit and pay to the person injured, the sum of two dollars and fifty cents, recoverable before any

magistrate within the county where the offence was committed. All laws and parts of laws relative to grist

mills and millers, heretofore in force in this state, are hereby repealed, except so much of said acts allowing and regulating writs of ad quod damnum.

This act to take effect from and after its

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publication.

CHAPTER LIX.

AN ACT directing the mode of proceeding in impeachment.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That all civil officers, holding any commission under the Civil officers. authority of this state, shall be impeachable by whom imby the House of Representatives, either for peached. mal admisistration, or corruption in his office, or habitual drunkenness or intoxication, or notorious inattention or neglect of duty; which impeachment shall be prosecuted by the Attorney General, or such person or persons as the house may appoint.

Sec. 2. The Senate shall have the sole power of trying all impeachments, and when By whom sitting for that purpose shall be on oath or af- tried. firmation, and no person shall be convicted without the concurrence of a majority of the

Senators elected.

Sec. 3. Judgment in case of impeachment shall not extend further than to removal from Judgment for office and to disqualification to hold and enjoy office only. any office of honor, trust or profit, under this state, but the party convicted shall nevertheless be liable and subject to indictment, trial. judgment and punishment, according to law.

menalty for failing to grind grain in the order that it is received.

Sec. 4. This act to be in force from and after its publication.

CHAPTER LX.

AN ACT authorising and regulating arbitrations.

APPROVED-January 29, 1818.

What cases may be a bitrated and made a rule of court.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That all persons who shall or may have any controversy or controversies, for which there is no remdy but by personal action or by suit in equity, and who are desirous of settling or terminating the same, may agree to submit the said controversy or controversies, to the umpirage or arbitration of any person or persons to be by them mutually chosen for that purpose, and that their submission may be made a rule of any court of record within this state.

Sec. 2. When any person or persons have Farties to en- agreed to submit any matter or matters, in controversy between them, to umpirage or arbitration as aforesaid, and that the said submission maybe made a rule of court, they shall enter into arbitration bonds, under their hands and seals, duly executed and delivered, with conditions for the faithful performance of the award or umpirage; which condition shall set forth the name or names of the umpire or arbitrators, and the matter or matters submitted to his or their determination, and shall also expressly state their agreement that the submission may be made a rule of any court of record within this state, or may be made a rule of such particular court as they may name or point out in their submission; and when the umpire or arbitrators is or are appointed, and the arbitration bonds duly executed and de:

livered as aforesaid, either party may appoint a time and place for the umpire or arbitrators to attend or meet, of which he shall give written notice to the opposite party and to the umpire or arbitrators, at least ten days before the time appointed for such meeting, and when the umpire or arbitrators shall be ready to proceed to the business to which he or they shall have been appointed the parties may proceed to exhibit their proofs, and the umpire or arbitrators shall have power to adjourn, from time to time, until he is prepared to make his umpirage, or they are prepared to make their award, provided the same be made up within the time stipulated in the submission.

SEC. 3. The parties shall have the benefit of legal process to compel the attendance of Cl'k to issue witnesses, which process shall be issued by the clerk of the circuit court of that county, and shall be returnable before the umpire or arbitrators on a day certain, and any person. or persons disobeying such process shall be deemed guilty of contempt of the court out of which the same issued, and shall be subject to the same penalties and forfeitures, as are provided for disobeying writs of subpæna in Costs of witother cases, and the costs of such witnesses nesses by shall be taxed by the umpire or arbitrators, according to the provisions contained in the law, ascertaining the fees of witnesses; which costs, together with the sum hereinafter allowed to the umpire or arbitrators, shall be made a part of the rule of court, and all witnesses examined by the umpire or arbitrators shall be under oath unless otherwise agreed to by

the parties. SEC. 4. The award or final determination of the umpire or arbitrators, made agreeably in writing & to this act, shall be drawn up in writing and copies delivshall be signed by him or them, or so many cred to the of them as may agree thereunts, and a true parties. copy of the said award or umpirage shall within fifteen days thereafter be delivered by the

place of meeting.

subpænas.

whom taxed.

umpire or arbitrators to each of the parties, or

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Award where filed.

Howconfirmed & how set aside.

left at bis, her or their usual place of abode; and if either of the parties shall refuse or neglect to obey the said award or umpirage, the other party may return the same, together with the submission or arbitration bond to the court named in the submission, or if no court be named in the submission, then to the circuit court of the county in which the parties reside, the submission or award, so returned, shall be entered on record and filed by the clerk, and a rule thereupon made, that the person or persons against whom such award or umpirage is to operate, shew cause at that or the next succeeding court why the said award or umpirage should not be made the judgment of the said court, and if the party should fail to appear, having had ten days provious notice, or appearing, should not shew in the opinion of the court sufficient cause, the court shall then proceed to enter judgment thereupon; which judgment shall have the same force and effect and operation as judgment in other cases : Provided always, that before any rule of court is made thereon the party moving for such rule shall produce to the court satisfactory proof of the due execution of the submission or arbitration bond, also that the party refusing or neglecting to obey the award or umpirage hath been furnished with a true copy thereof as aforesaid; and provided further that the party shewing cause why the award or umpirage should not be made the judgment of the court, shall be at liberty to produce before the court any evidence that he can to shew that the said award or umpirage was obtained by mistake, in matter of law or fact, or that the same was obtained by corrupt or other undue means, & in either case the said award or umpirage shall be annulled and set aside at the costs of the party prosecuting the same.

Sec. 5. In all cases where an award or

umpirage shall be presented to any court of record within this state, for a judgment to be entered thereon, whether the reference shall have been made by rule of court or otherwise, itshall be the duty of the court to which the same shall be presented as aforesaid, to hear any evidence of either party, whether to invalidate or support the same, and to set aside or enter judgment on the said award or umpirage, as to said court may seem just.

Sec. 6. The umpire or arbitrators shall be entitled to receive each, the sum of one del- allowance to lar per day for each and every day necessari- arbitrators. ly employed in performing the duties of their

appointment.

Sec. 7. In all cases when the plaintiff and defendant having accounts to produce one against another, shall by themselves, attornies or agents, consent to a rule of court, referring an award on mutual acthe adjustment thereof to certain persons mu- counts to tually chosen by them in open court; the a- have the ward or report of such referees being made ac- same validicording to the submission of the partids, and ty as a verapproved of by the court, and entered upon the record or roll, shall have the same effect and be deemed and taken to be as available in law as a verdict given by twelve men; and the party to whom any sum or sums of money are thereby awarded to be paid, shall have judgment on scire facias for the recovery thereof, as the case may require.

Sec. 8. All laws and parts of laws now in force in this state, relative to arbitrations, shall be and the same are hereby repealed.

This act to take effect and be in force from and after its publication.

CHAPTER LXI.

AN ACT for the relief of Insolvent Debtors

APPROVED-January 29. 1818.

Sec- 1. BE it enacted by the General Assembly of the State of Indiana, I hat if any person or persons now are or shall be hereafter taken or charged in execution, and shall have remained in prison for the space of twenty days, it shall be lawful for any two justices of the peace of the county, upon the petition of the prisoner or prisoners, by warrant under their hands and seals to require the sheriff, jailor or keeper of the prison in such county, to bring the body of such prisoner or prisoners before them at the court-house on acertain day, together with a list of the several executions with which he or they may stand charged in the said jail; which warrant every such sheriff, jailor or keeper is hereby commanded to obey, and notice shall be given thereof to the party or parties, his her or their executors, administrators or agent, at whose suit such prisoner shall be in execution, if living within the county, and such prisoner coming before the justices, shall subscribe and deliver in a schedule of his or her whole estate. and take the following oath: I, A B, do in the presence of Almighty God, solemnly swear or affirm, (as the case may de) profess and declare the schedule now delivered and by me subscribed, doth contain to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods and effects unto me in any wise belonging, and such debts as are unto me owing, or to any person intrust for me, and of all securities and contracts whereby any money may hereafter become payable or any benefit or advantage accrue to me or my use, or any person or persons in trust for me, and that I, or amy person or persons in trust for me, have no

My person charged in execution & in prison may petition two justices of the peace.

Notice there of to be given

To make and subscribe schedule of property and take oath.

Form.

fands, money, stock or any other estate real or personal in possession, reversion or remainder of the value of the debt or debts with which I amcharged in execution, and that I have not directly or indirectly sold, lessened or otherwise disposed of in trust, or concealed all or any part of my lands, goods, stock, debts securities or estate whereby to secure the same to receive or expect any profit or advantage thereof, to defraud or deceive any creditor or creditors to whom I am indebted in any wise however. Which schedule being so subscribed in the presence of the justices, shall be lodged with the clerk of the court for the information of the creditors of such person or persons.

SEC. 2. The lands, tenements and hereditaments which shall be contained in such schedule for such use, right and interest or title as such prisoner or prisoners then shall have in the same, which he may lawfully part with, reserving to the wife of such debtor her right of dower therein, and also, all goods and chattels whatsoever in such schedule contained, Lands &c. shall be vested in the sheriff of the county vested in the wherein such lands, tenements, hereditaments, may sell the goods and chattels shall lie or be found, and such sheriff is hereby authorised, empowered and required to sell and convey the same to any person or persons whatsoever at public sale, for the best price that can be got for the same; and the money arising by such sale, shall be by such sheriff or officer paid to the creditor or creditors, at whose suit such prisoner or prisoners shall be imprisened, saving such property as shall have been exempted. from execution by the laws of this state; and after delivering such schedule and taking such oath, it shall be lawful for the said justices by their order, to command the sheriff, jailor or keeper of the prison within the county, forthwith to set at liberty such prisoner; which or be discharder shall be accordingly obeyed, and shall be ged.

How appropriated.

sufficient to discharge and indemnify such sheriff or other officer against all escape or escapes, action or actions whatsoever, which shall or may be brought or prosecuted against him or them by reason thereof; and if any action shall be commenced against such sheriff or other officer for performing his duty in pursuance of this act, he may plead the general issue and give this act in evidence. And notwithstanding such discharge, it shall be lawful for any creditor or creditors, at whose suit such insolvent prisoner was imprisoned, at any time afterwards, to sue out a writ of fieri facias to have execution against their estate, which such insolvent person shall thereafter acquire

or be possessed of.

SEC. 3. When any insolvent debtor shall be discharged pursuant to this act, and the schedule subscribed and delivered in by such prisoner, shall contain money due to such prisoner, or of goods, chattels and estate to him When sche- belonging, or in the possession of any person dule shall be or persons, in that case the clerk of the court delivered in, with whom the schedule is directed to remain, shall immediately issue a summons against shall issue a each of the persons named as debuors in the summons a- said schedule, and against such others as are gainst those therein said to have possession of any goods, chattels or estate of the property of the prisoner, reciting the sum of money he or she is charged with, or the particular goods, chattels or estate said to be in his or her possession, and requiring him or her to appear at the next court and to declare on oath whether the said money or any part thereof be really due to such prisoner, or whether such goods, chattels or estate or any of them be really in his or her possession and are the property of such prisoner; and if the person so summoned shall fail to attend according to such summons, or to shew good cause for his non attendance, it shall be lawful for the court to enter judgment against every such person for the monies,

the clerk of the court named as debtors.

goods, chattels or estate in such schedule mentioned, together with costs of suit, attorney's fee excepted, and if such person so summoned, shall appear and be sworn, judgment shall be entered for so much of the money, goods, chattels or estate as he or they shall acknowledge to be due or to be of the property of such prisoner and in his possession, with costs as aforesaid; which judgment shall be entered in the name of the sheriff, who may thereupon proceed to levy execution as in other cases, and to dispose of the money, goods, chattles or estate so recovered, in the same manner as by this act he is directed to dispose of other effects.

Sec. 4. Provided always, that where any such garnishee shall not acknowledge the whole money to be due or all the goods, chattels or estate mentioned in the schedule to be of the property of the prisoner and in his possession, the sheriff or such prisoner at any time after (unless barred by any of the several statutes limiting the times of the commencement of actions) shall be at liberty to claim the residue by legal process, and the former judgment as to such garnishee shall be no further bar in such process than for so much money or such goods, chattels or estates as the garnishee is thereby ordered to pay and deliver.

SEC. 5. Every sheriff shall be allowed to retain out of the effects of such insolvent debt- Certain fees or before the distribution thereof, all reasona- retained. ble expences in recovering such money, goods, chattels and estate as aforesaid, including such fee to a lawyer for proceeding against a garnishee as shall be judged reasonable by the court, and if such effects be not sufficient he shall be reimbursed such expences by the creditor or creditors if more than one, in proportion to their demands.

SEC. 6. Where any person now is or may hereafter be committed for any debt or dama-

Failing to attend, court may award Judgment.

mitted who are unable to pay the prison fees, the demanded of the persons suing.

persons com- ges whatsoever, and shall not be able to pay his or her ordinary prison fees, the sheriff or Jailor may demand and recover of the party or parties at whose suit such insolvent prisonsame shall be er shall be imprisoned such prison fees as are allowed by law: provided nevertheless, that such insolvent prisoner shall afterwards be liable to the action of the creditor or creditors to recover such fees, and such creditor or creditors shall and may not with standing his her or their consent to the releasing of such prisoner, afterwards sue out a scire facias to have a new execution against the estate of such prisoner.

> Sec. 7. When any debtor is in custody on several executions it shall not be lawful for the sheriff, jailor or other officer to demand or receive any more fees than the rate fixed by law in case of a debtor confined on one execution, which shall be paid by the creditor at whose suit such debtor was first taken.

> A!l laws and parts of laws in force relative to insolvent debtors be and the same are hereby repealed.

> This act to be in force from and after its publication.

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CHAPTER LXII.

AN ACT concerning vagrants.

APPROVED-January 22, 1818.

deemed vagrants.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That every Who shall be person who shall be suspected to get his livelihood by gaming, and every able bodied person, who is found loitering and wandering a. bout and not having wherewithal to maintain himself by some visible property, and who doth not betake himself to labor or some hopest calling to procure a livelihood, and all persons who quit their habitation and leave their wives and children without suitable means of subsistence, whereby they suffer or may become chargeable to the county, and all other idle, vagrant, dissolute persons, rambling about without any visible means of subsistence, shall be deemed and considered as vagrants.

SEC. 2. When any such person is found in any county, any justice of the peace shall from information or from his own knowledge issue his warrant to the sheriff or constable commit such to bring such person before him, and if upon person to jail? examination it shall appear to such justice that he comes within the description of vagrants, agreeable to this act, he shall commit him to the jail of the county until the next Circuit Court, unless he enter into bond, payable to the county treasurer in the sum of fifty dollars, with sufficient security or securities, to be adjudged of by the justice, for his appearance before the said court, and to abide the determination thereof. If upon examination it appears to the said court, that such person is within the description of vagrants, and is a minor, they shall direct the sheriff to bind him to some person of useful trade or occupation, until he shall arrive to the age of twenty-one bind out such years, and if such apprentices desert their mas- persons. ters, they shall be dealt with as other apprentices who leave their masters before the expiration of their apprenticeship. But if such vagrant be above the age of twenty-one years, the said court shall direct the sheriff to hire him out for any term not exceeding nine months: Provided however, that if such person have a wife or family within the state he shall be set at liberty, upon his entering into bond, with approved security, payable to the eounty treasurer, to return to his wife and family, and follow some useful employment for their maintenance and support.

SEC. 3. The money arising from the hire

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of any vagrant shall be applied by the court towards the payment of his debts, but if be ing from hire shall not be indebted or owe to the amount of his hire, the same or the balance thereof shall be paid to such vagrants, at the time his or their service expires, unless he shall have a wife or children, in which case it shall be applied to their use. When any vagrant shall have entered into bond, and security as last mentioned to the county treasurer, and the penalty thereof shall become forfeited, the court shall direct an execution to issue thereupon, having first given ten days notice to the party or parties by scire-facias, that such execution will issue if no cause be shewn why the same ought not to issue against the goods and chattels, lands and tenements of such security, the sheriff shall make distress and collect the amount, as on other executions, and the money arising therefrom shall be applied towards lessening the county levy.

SEC. 4. All the justices within their respective townships, shall see that this act is executed, and all sheriffs and constables within the several counties, shall give information to J. P. shall see such instices, of all vagrants that may be within their knowledge in their respective townships, and grand jurors, empannelled for any county, shall make presentment of all such persons within the county as they may suspect to be vagrants, agreeably to this act, and upon such presentment the court shall direct some justice of the peace to issue his warrant to bring such suspected person before him, and if upon examination it appears that they come within the description of vagrants, the same steps shall be taken against them as are heretofore directed to be taken against vagrants.

Sec. 5. All laws and parts of laws. heretofore in force respecting vagrants be and the same are hereby repealed.

This act to be in force from and after its publication.

CHAPTER LXIII.

AN ACT concerning Insane persons.

APPROVED - January 22, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That any bargain, sale, conveyance or act of any person or acts of insane persons in a state of insanity, shall be void and of no effect in law.

SEC. 2. When any circuit court in this state, shall receive satisfactory information that any person in their respective counties, having property, and is or have become insane, it shall be the duty of the said court to direct the sheriff of the county to summon twelve intelligent, disinterested men of the ians after a county, impartially to enquire into the fact, verdict of inand to appoint the time and place where such sanity. jury shall meet and inspect such insane person, and also to cause to come before them such persons as they may think proper, to give testimony as to the insanity of such person, and if the jury so summoned and sworn shall decide from such inspection and testimomy that such person is insane and not able to take care of his or her property, the court shall proceed to appoint three suitable persons as guardians of the person and estate of such insane person; whose duty it shall be to take such care of the person and property of such insane person as may be necessary for the safety and preservation of the same.

C. C. to lappe point guard-

SEC. 3. Whenever it may be thought necessary, the circuit court of the county wherein such inquest of insanity was held, upon C. C. may or proper representation, may direct and order the sale of the real and personal estate of such insane person, for the support of such insane person, his or her family, the payment of his or her debts, or for the improvement thereof, and generally to act and do what to them shall

der a sale of property.

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seem proper for the benefit of the person or property of such insane person consistent with law.

SEC. 4. As soon as it is determined by inquest as mentioned by the second section of this act, that such person is insane, it is hereby declared that all judgments, executions and suits pending against such in ane person shall be suspended until the appointment of a guardian or guardians, and then the same proceedings may be had against such guardian or guardians, whose appointment shall continue during the insanity of such insane person, to be recovered by the court for the recovery of the debts of such insane person, under the same rules, restriction- and regulations as are prescribed by the existing laws of this state a-

SEC. 5. All persons insane, who have no property for their support, shall be entitled to all the benefits of the laws of this state for the relief of paupers; and the overseers of the poor and all other persons concerned, are directed to govern themselves according to the provisions of an act for the relief of the poor.

gainst administrators and executors.

Sec. 6. All acts and parts of acts concerning i sane persons, heretofore in force in this state, are hereby repealed.

This act to take effect and be in force from and after its publication.

Marine & Marine

CHAPTER LXIV.

AN ACT regulating the admission and prace tice of Attornies and Counsellors at Law.

APPROVED-January 22, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That no person shall be permitted to practice as an attorney or councellor at law, or to commence, con(333)

duct or defend any action, suit or plaint in which he is not a party concerned, in any court of record within this state, either by using or subscribing his own name or the name of any other person, without having previously counsellors obtained a licence for that purpose from any at law by two of the judges of the supreme court, or from whom licens two circuit judges, agreeably to the laws of this state; which licence shall constitute the person receiving the same, an attorney and counsellor at law, and shall authorise him to appear in all the superior and inferior courts of record in this state, if the licence be given by the said judges of the supreme court, and in all the circuit and inferior courts of record in this state, if the licence be given by the circuit judges of this state, and there to appear and practice as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behaviour in the said practice; and to demand and receive all such fees as are or hereafter may be established, for any service which he shall or may do as an attorney or counsellor at law in the said state.

SEC. 2. No person shall be entitled to re-ceive a license as aforesaid, until he hath ob-moral char: tained a certificate from the court of some acter.

county, of his good moral character. SEC. 3. It shall be the duty of the Clerk of the Supreme Court, to make and keep a Clerk of S.G. roll, or record on good paper, stating at the to keep a roll head or commencement thereof, that the per- of attornics. sons whose names are thereon written, have been regularly licensed and admitted to practice as attornies and counsellors at law within this State, and that they have doly taken the oath to support the constitution of the United States, and such other oaths as may be and are required by law, and the oath of office as prescribed by law, which shall be certified and endorsed on the said license.

SEC. 4. And no person whose name is not

Attorneys &

names from the roll.

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subscribed or written, on the said roll, with the day and year when the same was subscrib. ed thereto or written thereon, shall be suffered or admitted to practice, as an attorney or counsellor at law, within this State, under the penalty hereinafter mentioned, any thing in this law to the contrary notwithstanding, and Judges of S. the Judges of the Supreme court, in open C. may strike court, shall have power, to strike the name of any attorney or counsellor at law, from the rolls for mal conduct in his office : Provided always that every attorney before his name is struck off the roll, shall receive a written notice from the clerk of the supreme court stating distinctly the grounds of complaint or the charges exhibited against him, and he shall after such notice be heard in his defence and be allowed reasonable time, to collect and prepare testimony for his justification, and every attorney whose name shall, at any time be struck off the roll, by order of the court in manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said Judges in open court, shall authorise him again to subscribe the same.

Sec. 5. The judges of the supreme court and the judges of the several circuit courts within this state, shall have power to punish in a summary way, according to the rules of vs. attornies law and the usages of courts, any and every for contempt attorney or counsellor at law who shall be guilty of any contempt in the execution of his office; and every attorney and counsellor at law, receiving money for the use of his client, and refusing to pay the same when demanded, may be proceeded against in a summary way, by motion; and all attornies and counsellors at law, judges, clerks and sheriffs, and all other officers of the several courts in this state, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and

proceeded against in the same manner as other persons are, except in such cases and at such times as they may be privileged by statute from arrest.

Sec. 6. No person shall be permitted to practice as an attorney or counsellor at law by What perinstituting, defending or conducting anyaction, sons are proplaint, suit or plea, in any court within this bibited from state, who holds a commission as a judge practising of the Supreme or Circuit Courts of this State or any person who holds a commission as justice of the peace, sheriff or coroner, or who acts as a deputy sheriff, jailor or constable within this state, be permitted to practice as an attorney or counsellor at law in the county in which he has been commissioned or appointed, nor shall any clerk of the supreme or circuit courts of this state, be permitted to practice as attornies or counsellors at law in the court of which he is clerk, and no person shall be permitted or suffered to enter his name upon the roll or record, to be kept as aforesaid by the cierk of the supreme court, or to do any official act appertaining to the office of an attorney or counsellor at law, until he hath taken an oath to support the constitution administered of the United States and the constitution of to attorney. this state, an eath of office, and such other oaths as may be required by the laws of this state, and the person administering such oath shall certify the same on the back of the licence; which certificate shall be a sufficient voucher to the clerk of the supreme court to enter or insert or permit to be entered or inserted on the roll of attornies and counsellors at law the name of the person of whom such certificate is made.

SEC. 7. The following oath of office shall be administed to every attorney and counsel. Oath of office lor at law, before they subscribe the respective rolls, to wit: I swear or affirm that I will in all things faithfully execute the duties of an attorney at law or duties of counsellor

at law, as the case may be, according to the best of my understanding and abilities.

Attornies of other atates on examina tion admitted in this.

SEC. 8. Any person producing a licence or other satisfactory voucher proving that he hath been regularly admitted an attorney at law in any court of record within the United States, and that he is of good moral character, may be admitted to an examination for the degree of an attorney and counsellor at law, and any attorney and counsellor at law residing in any of the United States, who is of good moral character, may at any time on application be admitted to an examination for the degree of attorney and counsellor at law within this state. SEC. 9. If any person or persons not licen-

ced as aforesaid, shall receive any money or any species of property as a fee or compensation for services rendered or to be rendered by him or them as attorney or attornies, counsellor or counsellors at law within this state, all monies so received shall be considered as received to the use of the person paying the same, and may be recovered back with costs of suit, by an action or actions for money had and received, and all property delivered or conveyed, for the purpose aforesaid, or the value thereof maybe recovered back with costs of suit, by the person delivering or conveying the same, by an action of detinue or trover and conversion, and the person or persons receiving such money or property shall forfeit three fold the amount or value thereof, to be recovered with costs of suit before any magistrate, if within a magistrate's jurisdiction, but if not, before any court of record within this state, by action of debt or qui tam, the one half to the use of the person who may sue for the same, and the other half for the use of the county in which such suit shall be brought, and if any person or persons shall sign or cause to be assigned, the name of an attorney, or ei-

ther of the judges of the Supreme Court, to a-

Persons not licenced to pay back money received and liable to a penalty.

ny certificate or licence, provided for by this act, with intent to deceive such person or persons, shall be deemed guilty of forgery, and may be prosecuted and punished according-

Sec. 10. Plaintiffs shall have the privilege Litigantsmay of prosecuting, and defendants the privilege of manage their defending, in their proper persons, and nothing herein contained shall be so construed as to debar them therefrom, nor shall any thing herein contained be so construed as to affect any person or persons heretofore admitted to the degree of an attorney and counsellor at law, according to the rules of the former General Court, so as to subject them to a further examination, or cause them to renew their licence.

CHAPTER LXV.

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AN ACT respecting non-resident Attornies and Counsellors at Law.

APPROVED-December 19, 1817.

Sec. 1. BE it enacted by the General Ass sembly of the State of Indiana, That all laws and parts of laws, now in force in this state prohibiting non-resident attornies and counsellors at law from practising in this state he and the same are hereby repealed.

CHAPTER LXVI.

AN ACT concerning Clerks.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That in all caC'ik. to make out a bill of officer.

cases where an execution issues from any court of record within this state on a judgment, the clerk of the court from which the same may issue, shall, at the time of issuing the same, costs and de- make out under his signature, and deliver to liver it to the the sheriff or coroner as the case may be, with the execution a detailed copy of the bill of costs in the said suit, from the commencement to the termination thereof, in order that the party paying the same, may certainly know with what he is chargeable; which said bill the said officer, into whose hands the execution may so come, shall deliver to the party against whom the execution may be, upon his replevying for or paying the same, together with his certificate thereon, that the same was so replevied for or paid, by the said person.

penalty for omission.

SEC. 2. Should any officer, concerned in the issuing or executing any execution hereafter to be issued as aforesaid, fail in the duty enjoined on them in the preceding section, they shall severally forfeit his costs in such snit.

mal-conduct.

SEC. 3. Any clerk of the circuit courts of Cl'k of C. C. this state, who may hereafter be guilty of malindictable for administration or corruption in his office, shall upon indictment prefered by the grand jury of the county in which such clerk resides, and being convicted thereon, forfeit and pay any sum not more than five hundred nor less than twenty dollars.

where to be kept and at what hours to be open.

Sec. 4. The clerks of the circuit court shall Ci'ks. offices reside and keep their offices at the seats of justice of their respective counties, and the clerk of the supreme court shall reside and keep his office at the seat of the State Government. And the clerks of the several circuit courts in this state shall severally keep their offices open each and every day of the year, Sundays and the fourth of July excepted, from the hours of ten o'clock in the morning until one o'clock in the afternoon, during which time they are severally required to give due attendance either in person or by a sufficient deputy, and at all other reasonable times when thereunto required, to transact any business in their office.

SEC. 5. Be it further enacted, That the clerk of the Supreme Court and the several clerks of the circuit courts in the different Cerk to procounties, shall each procure and keep a book well bound, in which book shall be recorded book, &c. at the determination and judgment of every suit in full length, all the proceedings in each and every suit or action, whether criminal or civil, and make up the records of each term on or before the first day of the succeeding term, under the penalty of not less than five nor more than fifty dollars for each and every such suit or action so neglected to be recorded in full length, as this act requires, upon presentment or indictment.

cure record

CHAPTER LXVII.

AN ACT regulating Weights and Measures.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That the several boards of county commissioners within this state, be, and they are hereby authorised and required to procure for their respective County come counties, and at the expense of the same, a missioners to set of the following measures and weights, for procure mea the use of their county, that is, one measure of sures and one foot or twelve inches, English measure, so called ; also, one measure of three feet or thirty-six inches, as aforesaid; also, one half bushel measure for dry measure, which shall contain one thousand seventy five and one fifth solid inches; also, one gallon measure, which shall contain two hundred and thirtyone solid inches; which measures are to be of

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by the clerk of C.C.

wood or any metal the court may think proper ; also, one set of weights commonly called Averdupois weight, and sealed with the name or initial letters of the county inscribed there-To be kept on; which weights and measures shall be kept by the clerk of the circuit court of each and every county in this state, for the purpose of trying and sealing the weights and measures used in their counties.

when procured, notice to be given.

ling by other weights and measures, finable.

Clerk to seal weights, &c.

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Sec. 2. As soon as the several boards of county commissioners shall have furnished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door for one month; and any person who shall thereafter buy or sell any com-Persons sel- modity whatsoever, by measures or weights, that shall not correspond with the county weights and measures, shall for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars, for the use of the county seminary where such offence shall have been committed, and also the costs, to be recovered before any justice of the peace for said county. Every person or persons desirous of having his, her or their weights and measures, tried by the county standard, shall apply to the clerk of the circuit court of the county in which he shall live, and if they correspond with the county standard, the clerk shall seal them with the seal provided for that purpose.

CHAPTER LXVIII.

AN ACT regulating estrays and water crafts going adrift.

APPROVED-January 22, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana. That if any person or persons shall take up any boat, flatperionge, cance or other small vessels gone adrift, he or she shall within five days, cause the same to be advertised in at least three of the most public places in the neighbourhood taking up where such craft is taken up, particularly des- boats, &c. cribing such craft, and stating the time it was taken up; or if such craft is worth or can be sold for five dollars or more, then notice of taking up such craft shall be given by the taker up, in some public newspaper, if there be any in such county; and the owner or owners of such craft, by proving the same within six months from the time it was taken up, shall receive the same, after paying to the taker up a reasonable sum for his trouble and expense, to be determined by some convenient justice of the peace, if they cannot agree upon such

Sec. 2. Every person who shall take up a stray horse creature, mule or ass, shall, within five days, advertise the same in three different How persons places in the neighbourhood or township, and shall proceed shall also, within ten days thereafter, unless it taking up shall have been previously claimed and pro- horses, &c. ven by the proper owner, and a tender made of the compensation hereinafter provided, take the same before some justice of the peace of the county in which such stray shall be taken up, and make oath before such justice, that the same was taken up on his or her plantation or place of residence in said county or otherwise, (or as the case may be) and that the marks or brands thereof, have not been altered by him, or any other person or persons to his or her knowledge before or since the taking up, the justice shall then issue his warrant to three disinterested householders in the neighborhood, unless they can be otherwise had, causing them to come before him to appraise such estray, and after they or any two of them are sworn to appraise such estray without partiality, favor or affection, they shall forthwith proceed to appraise the same, and immediate-

How persons

ly make return thereof in writing, together with a description of the marks, both natural and accidental, brand, statue, color and age of said horse creature, mule or ass to said justice, who shall enter the same in his estray book, and transmit a certified copy thereof, under his hand and seal, together with the original return of the appraisers, under their hands, to the clerk's office of the circuit court of the county in which such estray has been taken up, within the time as limited in the first section of this act; who shall enter the same in his estray book, and file the aforesaid transcript and certificate of appraisement in his office; and the taker up shall pay unto the justice two dollars, fifty cents of which to be paid unto the clerk aforesaid; which sum of fifty cents shall be transmitted at the same time with the aforesaid certificate of entry and appraisement, and the said clerk shall cause a copy of such valuation and description to be publicly affixed at the court house door of his county during the three succeeding terms; and the justice shall, within thirty days, cause a certified copy of the appraisement from his estray book to be published three times in the most convenient newspaper in this state, for which he shall pay to the printer one dollar at the time he forwards such copy for publication.

How persons may proceed taking up hogs. neat cattle, &c.

Sec. 3. Any person who shall take up any head of neat cattle, sheep, hog or goat shall, within five days after, cause the same to be advertised in three different places of the neighborhood or township, and shall also, within ten days thereafter, unless it shall have been previously claimed and proven by the proper owner, and a tender made of the compensation hereinafter provided, cause the same to be viewed by some householder of the county where the same shall be taken up, and immediately go with such householder before a justice of said county, and make oath before

him as is required in taking up estray horse creatures or asses, and then such justice shail take from such house holder, upon oath, a particular description of the marks, brands, color and age of every such neat cattle, sheep, hog or goat, and such justice shall cause such estray or estrays to be appraised in like manner as is required to be done in case of strayhorse creatures, which description & valuation shall be entered by such justice in his stray book and by him transmitted to the clerk of the circuit court for said sounty, to be by him recorded in his estray book, and he shall cause a copy to be publicly affixed at the court-house door of his county, as before directed in taking up stray horse creatures, and the taker up shall pay the justice twenty-five cents, and deposit with such justice twenty-five cents, to be by him transmitted at the same time with the certified copy to the clerk as aforesaid for his services: Provided, that if two or more strays of the same species are taken up by the same person at the same time, they shall be included in one entry and one advertisement, and in such case the said justice and clerk shall receive no more than for one such species: provided also, that no person shall be allowed hereafter to take up or post any head of nett cattle, sheep, hog or goat, between the first day of April and the first day of November following, unless the same may be found within the enclosure of the taker up, having broken in the same.

Sec. 4. As a reward for taking up there shall be paid by the owner to the taker up or Reward for such other person as may be authorised by this taking up. act to receive the same, for every horse, mule or ass, one dollar; for every head of neat cattle fifty cents; for every sheep or goat, twenty five cents, and for every hog above six Charges for months old, ten cents, together with the fees keeping. paid by the taker up to the justice and clerk aforesaid, and reasonable charges for keeping

said estray or estrays, to be assessed by two disinterested householders, appointed by some one justice, in the manner and form as the appraisers are to be appointed under this act who shall in the same manner and under the same restrictions, proceed to make appraisement and return to the said justice, as by this act in other cases is required, and on failure of the claimant to satisfy such fees and charg es, the estray or estrays shall be by some constable, after giving two days notice, sold to the highest bidder to satisfy such costs and charges for keeping, and the said constable after paying such costs and charges and deducting one dollar for his fees of sale, shall pay the remainder to the claimant.

in claimwithin one year.

Peanlty for

SEC. 5. If the owner or owners of any es-Owner to put tray animals, taken up under the provisions of this act, shall not appear within one year after the publication required in this act, and prove his, her or their property, then, and in that case, the property shall be vested in the taker up: Provided nevertheless, that nothing in this act shall be so construed as to prevent the lawful owner or owners of estray animals from proving his, her or their property, at any time after the expiration of the said year, but it shall be at the choice of the taker up either to deliver the estray or pay the amount of the appraisement after deducting the necessary expence of taking up, and also reasonable charges for keeping such estray or estrays; but if any taker up shall make use of any estray horse or horses, by working him or them, in such case he shall not be entitled to any pay for keeping said horse or horses.

Sec. 6. If any person or persons shall trade or sell any such stray or water craft, beselling strays fore he or she or they are vested with the right of property agreeably to this act, for any purpose whatsoever, he, she or they shall forfeit and pay double the value thereof, to be recovered by any person or persons suing for the

same, in any court of record within this state having cognizance thereof, the one half to the informer and the other to the county; and it shall not be lawful for any person or persons to take up an estray, except as shall be hereafter excepted, unless he, she or they shall have a freehold or be a tenant for three years, and have bond for the land on which he or she resides.

Sec. 7. When any animal, taken up in pursuance of this act, the appraised value of which shall exceed the value of five dollars certify to Clk may be restored to the proper owner, or where of C. C. resthe same may be lost it shall be the duty of toration or the taker up within one month afterwards loss of esto certify in writing, under the signature of the taker up, to the clerk aforesaid such restoration when the same may be restored; with the name and place of residence of the person claiming the same, or such loss where the same has been lost, together with the time and manner thereof; and if the taker up of any such animal, taken up in pursuance of this act, shall neglect to make the certificate aforesaid, within the time limited by this act, or shall make a false statement of facts in any such certificate, any person so offending, for every such offence, shall forfeit and pay the value of such stray animal or animals respectively, to be recovered by action of debt, qui tam, or indictment, in any court where the same may be cognizable, one half thereof to the county respectively, and the other half to whoever will sue for the same.

Sec. 8. The commissioners of each and every county in this state shall cause a pound to County Combe made at or near the several court houses, m'rs to cause with a good and sufficient fence, gate, lock and pounds to be key, where all estray horses, mules and asses, made. above two years old, taken up within 20 miles of the court-house, shall be kept on the first day of every circuit court, for three succeeding terms after the same is taken up, from eleven

Whenestrays shall be put therein.

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to be appoin-

ted.

until three o'clock on each day, that the owner may have an opportunity of claiming his, her or their property; and any person taking up any such horse, mule or ass, not exceeding two years old, shall not be compelled to exhibit such estray or estrays at the court house, but shall be governed in other respects as is directed in this act; and when any person, taking up any stray horse, mule or ass, more than two years old, resides twenty miles and upwards from the court-house, he shall not be compelled to exhibit such stray or strays more than once in the pound, which shall be on the first day of the second term after taking up; and the board of commissioners of each county failing to have such pound erected, shall forfeit and pay a sum of twenty dollars each for every court thereafter until the same be erected, and until such pound is erected, no person taking up any horse, mule or ass, shall be liable to any penalty for not exhibiting the same; and the commissioners for each and every county in this state, shall appoint some fit person to take charge of the said pound and keep the same in repair, whose duty it shall be to attend at the said pound, on the several court days, during the time such strays are directed to continue therein, with the key of the same; and the said commissioners shall make such reasonabte allowance for the expense of erecting and keeping the said pound as to them shall seem proper, to be paid out of the treasury in like manner and form that other county charges are liquidated and paid, and any person being appointed and undertaking to take care of the said pound, and failing to discharge his duty agreeably to the directions of this act, shall forfeit and pay to the person injured, the sum of eight dollars for every such offence with costs, recoverable before any justice of the county where such offence shall have

been committed. All laws and parts of laws heretofore in force, respecting estray animals and water crafts going adrift are hereby repealed.

This act to take effect and be in force from and after its publication.

CHAPFER LXIX.

AN ACT regulating enclosures.

APPROVED-January 27, 1818.

Sec- 1. BE it enacted by the General Assembly of the State of Indiana. That all fields kept for enclosures, shall be well enclosed with a fence composed of sufficient posts and rails, posts and pailing, palisadoes or rails alone, laid up in the manner which is commonly called a worm fence; which posts shall be deep set and strongly fastened in the earth, and all fences composed of posts and rails, posts and pailing or palisadoes shall be at least five feet in height; and all fences which are composed of rails in manner which is commonly denominated a worm fence, shall be at least five feet six inches in height, the upper- be a legal most rail in each and every pannel thereof, fence. supported by strong stakes strongly set and fastened in the earth, so as to compose what is commonly called a stakeing and ridering, otherwise the uppermost rail in each and every pannel shall be braced with two strong rails, poles or stakes, locking each corner or angle thereof; and in all the foregoing materials, the apertures between the rails, pailings or palisadoes within two feet of the surface of the earth shall not be more than four inches, and from the distance of two feet from the surface of the earth, the apertures between such rails pailings or palisadoes shall not be more than six inches, and that in all worm fences staked and ridered, the worm shall be at least four feet six inches, and if locked as aforesaid, the

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worm shall be at least five feet; and all fences of the height and strength herein required, shall be considered lawful against horses and neat cattle-

Sec. 2. If any horse, mule or ass, sheep, goat or neat cattle shall break into any person's enclosure, the fence being of the aforesaid height and strength, or if any hog or hogs shall break into any person's enclosure, the fence being of the aforesaid sufficiency, and by the view of two persons for that purpose appoint-Owner of aned by the board of county commissioners of said county, found and approved to be such, of to pay dam then the owner of such creature or creatures shall be liable to make good all damages to the owner of the enclosure, for the first offence, single damages only; ever afterwards, double

the damages sustained.

Sec. 3. For the better ascertaining and regulating of partition fences, it is hereby directed that when any neighbor shall improve lands adjacent to each other, or where any person shall enclose any lands adjoining to another's land already fenced, so that any part of the first person's fence becomes the partition partition fen- fence between them, in both these cases the ces how main charge of such division fence (so far as enclosed on both sides) shall be equally borne and maintained by both parties; to which and other ends in this law mentioned, the board of county commissioners in the several counties in this state, yearly, shall nominate and appoint three honest and able men, for each township respectively, who being duly sworn to the faithful discharge of the duties of their appointment, shall proceed, at the request of any person or persons feeling him or themselves aggrieved, to view all such fence or fences, about which any difference may happen to arise; and the aforesaid persons or any two of them in each township respectively, shall be the sole judges of the charge to be borne by the delinquent or by both or either

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Commissioners to appoint viewers.

party, and of the sufficiency of all fences whether partition or others; and when they shall adjudge any fence to be insufficient, they shall give notice thereof to the owners or proprietors or occupyers thereof, upon request of proceedings the other, and due notice given by the said of viewers. viewers, shall refuse or neglect to make or repair the said fence or fences, or to pay the moiety of the charge of any fence before made, being the division or common fence, within twenty days after notice given, then upon proof thereof before two instices of the peace of the respective county, it shall be lawful for the said justices to order the person aggrieved or suffering thereby, to make or repair the said fence or fences, who shall be reimbursed his costs and charges from the person so refusing or neglecting to make or repair the partition fence or fences aforesaid; or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, (as the case may be,) and if the delinquent shall neglect or refuse to pay to the party injured, the moiety of the charge of any fence before made, or to reimburse the costs. and charges of making and repairing the said fence or fences under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof. the overplus, if any, to be returned to the said delinquent : Provided, That nothing herein contained, shall be intended to prevent or debar any person or persons from enclosing his or her own grounds in any manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or by dykes, hedges or ditches. All such walls and fences to be in height, at least five feet from the ground, and all dykes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn and other quickset, so that such suclosures shall fully answer and secure the

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several purposes meant to be answered and secured by this law : Provided also, That such walls or fences of timber, other than those heretofore mentioned, and dykes, hedges and ditches, shall be subject to all provisions, inspections and restrictions respectively, to which by this law, any other enclosure or fence is made liable, according to the true intent and meaning bereof.

CHAPTER LXX.

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AN ACT concerning trespassing animals.

APPROVED-January 28, 1818.

Sec. 1. BE it enacted by the General Asembly of the State of Indiana, That if any horse or horses, neat cattle, sheep or hogs shall trespass by breaking into the lawful enclosure of any person or persons, every such person Trespassing or persons being injured by such trespassing animals may creature or creatures, the same may seize and be distrained. distrain, and may retain until he. she or they shall recover and receive the damages sustained by such trespass, together with the costs of advertising, and reasonable charges for keeping such creature or creatures so distrained in manner hereinafter directed.

SEC. 2. Every person or persons making such distress, shall, within the space of fortyrotice there- eight hours after the same shall have been made, give notice thereof to the owner or owners of such horse or horses, neat cattle, sheep or hog, if he, she or they can be conveniently found; but if not, then such person or persons seizing or distraining the same, shall, within three days after the distress made as aforesaid, cause an advertisement of the marks, brands, stature and color thereof, and of the place where the same may be found, to be affixed in a conspicuous manner at the most public place in

his or her township, and if upon such notice or advertisement such owner or owners shall appear but neglect or refuse to make or tender a reasonable satisfaction te the party injured for the damages sustained by such trespass, and in keeping the said creature or creatures, or if the said person or persons making the distress shall not accept the said satisfaction it shall and may be lawful for either of the parties aforesaid to complain and apply to any justice of the peace of the county where such creature or creatures shall have been seized and distrained as sforesaid, who shall upon such application and complaint, issue his warrant, directed to any two honest and respectable freeholders of the neighborhood, commanding and enjoining them forthwith to view the said trespass, and to value, appraise and ascertain the injury or damage done to or within the enclosure aforesaid, having due regard to the lawfulness of said fence, at the time the trespass shall have been committed, with the expenses and costs of keeping the said creature, and to make report on oath thereof to bim, with all convenient speed, which said valuation and appraisement &return, they the said freeholders are required and enjoined to make accordingly, and if the said valuation and appraisement shall not amount to more than the sum of money tendered to the party injured, as a recompense for the damage done as aforesaid before such complaint made, then the said justice shall give judgment for the same only to the party refusing such tender and award, reasonable costs and charges to the other party, for the unjust vexation, but if the said valuation shall amount to more than the sum tendered, or if no such tender be made, then, and in that case, the said justice shall award and give judgment for the valuation aforesaid to the party injured, with reasonable costs and charges for keeping the said creature or creatures so trespass-

Proceeding thereafter.

The against the other party, and shall award execution upon every such judgment with costs

of suit accordingly.

Sec. 3. Whoever shall hurt, kill, or do damage to any horses, neat cattle, sheep or hog, by hunting or driving them out of or from the said enclosure, or by neglecting to provide them with sufficient food and water, after they have been distrained, shall be liable to make good all damages sustained thereby to the owner of such creature or creatures.

When there is no owner animal to be appraised to the distrainer

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Sec. 4. If no owner or owners appear and make out his or their property in the said creature or creatures, within two weeks after such advertisement shall be published in the township as aforesaid, the person or persons making such distress shall forthwith under the penalty of twelve dollars, cause the like advertisement to be published three times successively, in one or more newspapers printed and published in this state, or in the county where such distress is made, if any be there published, but in case no such newspaper be published near said county, then such advertisement shall be put up in a conspicuous manner at the court house door of that county, and the party distraining shall make application, at the expiration of two months after the publication of the said advertisements, to the said justice of the peace, who is hereby authorised and required to issue his warrant to two honest and respectable freeholders and cause them upon their oaths or affirmations, to view, value and appraise the creature or creatures so distrained, and to ascertain the damages so done as aforesaid, with reasonable charges for keep. ing the said creature or creatures and to make return thereof to him as aforesaid : upon which valuation and return the property of and in the creature or creatures so valued shall become and be held and be taken to be and is hereby vested in the person making such distress, but nevertheless, he shall be accountable and an-

swerable to the owner or owners aforesaid, forthe valuation money aforesaid, at any time afterwards within the space of five years next Owner may after the publication of such advertisement as have the before mentioned in this act, having first da- same by pays ducted thereout, the costs of such proceedings, ing damages advertisements and charges of keeping the said and charges within 5 creature or creatures, together with the dama- years. ges ascertained by the before mentioned freeholders, but if the said owner or owners shall not appear and demand the same within the time limited by this act, then the said person or persons so making the said distress or distresses, upon demand made, shall pay over all such overplus money to the treasurer of the county, for the use of the said county, under the penalty of double the sam retained in his or her hands contrary to the directions of this law.

Sic. 5. If any such person or persons so distraining shall neglect to give such notice as herein before directed, or shall neglect to set up and publish such advertisement in the most personfailing public place in his or her township, he, she to give no or they shall lose all right or title or pretence tice not entiof right to a recovery of any sum or sums of thed to damamoney for such trespass, or any recompense for the same, but shall deliver up the said creature or creatures so distrained to the owntror owners thereof, without any recompense or reward whatspever, and that all the fines imposed by virtue of this act, shall be to the use of the owner of such creature, and the other half thereof to the use of the county, to be recovered by them or either of them in a summary way, as debts not exceeding fifty dollars are by law directed to be recovered.

Sec. 6. If any person or persons shall willingly and knowingly keep and retain any Penalty for horse or horses, neat cattle, sheep or hog, intentionally within his, her or their enclosure, for the space conficing and of forty eight hours without giving the notice and publishing the advertisements as afore-

said, every such person or persons shall forfeit and pay twelve dollars for every such offence, to be recovered and applied in manner aforesaid.

CHAPTER LXXI.

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AN ACT concerning the stock of non-residents running at large in this state.

APPROVED-January 26, 1818.

WHEREAS, it hath been represented to this General Assembly, that the citizens of a neighboring state are in the habit of transporting across the Ohio river and turning at large into the range within this state, large draves of horses, cattle and hogs, bearing the same mark of the stock of our own citizens, which not only subject them to the great trouble and expense of separating the stock thus mingling together, but to the entire loss thereof: FOR REMEDY WHEREOF,

Sec. 1. BE it enacted by the General Asembly of the State of Indiana, That if any person or persons, being the owner or possessor of any horse creature or horse creatures, cattle, sheep or hogs, in any of the adjoining states or territories, who shall bring the same within this state and turn the same loose to run at large within the bounds of this state for the purpose of running at large in the said state, brought into any person or persons feeling themselves aggrieved thereby, may take up the same or any part thereof, at any season of the year, as an estray or estrays, and shall proceed and be governed in all other respects by the laws now in force in this state regulating estray ani-

mals: Provided however, that nothing in this

act shall be so construed as to prevent citizens of any other state or territory, who is the owner or proprietor of any freehold estate in any county of this state, from turning their stock on the same ; and should said stock stray from the same and be found on the lands of any other person, they shall in no wise be consid red otherwise than in the same manner that the property of citizens of this state, which is running at large are considered : Provided also, That nothing in this act shall be so construed as to prevent citizens of the adjoining states or territories from bringing into this state, any stock of horses, cattle, sheep or hogs in time of high water : Provided, They remove the same ag in so soon as the difficulties and dangers occasioned by said high waters subside, on being notified by any citizen of any county of this state, which notice shall be in writing.

CHAPTER LXXII.

AN ACT respecting public Seminaries, and for other purposes.

APPROVED-January 26, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That the Gov. Gov. to apemor of this state be, and he is hereby author- point Trusized and required to appoint and commission teeofr Semunder the seal of the state, some fit person in each county as trustee of the public Seminary shall give therein, who shall, within thirty days after re- bond. ceiving his commission, enter into bond with two or more securities, in the sum of two thousand dollars, to and in the name of the Governer and his successors in office, conditioned for the faithful discharge of all the duties which now are or may hereafter be designated by law; which bond the said trustee shall deliver to the cierk of the circuit ours of the pro-

inary in each County who

non-residents may be taken up as estrays.

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per county, to be by him forthwith traesmitted to the secretary of state, and by him preserved in his office.

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Sic. 2. It is hereby made the duty of the Duty of such said trustee directly after receiving his commission, and giving bond as aforesaid, to call upon and receive from the county treasurer, and from such other person or persons as have, or by law ought to have any fine or fines in his or their hands, belonging properly to the county, for the use of a public seminary therein; and the sum or sums so received to enter in a proper book for that purpose, to the credit of the said seminary.

Sec. 3. It shall be, and it is hereby made the duty of the said county treasurer, or other person having any such money or monies in County Frenchis or their hands, to pay over the same to the y said trustee upon his application as aforesaid; and on failing or neglecting so to do, shall be fined in a sum double the amount of money or possity on far monies so withheld, to be recovered by molure to do so tion of the said trustee in the circuit court of the proper county, he having given the party ten days previous notice of such intended motion; and the judgment being thereupon entered, execution shall issue in the name of the said trustee, and no replevy allowed thereon; and which duplicated fine when so paid to the said trustee, shall be a discharge to the said delinquent treasurer, or other person, as the case may be, and the same shall be by the said trustee, placed to the credit of the proper sem-

mary.

Sec. 4. All fines which now are, or may hereafter be directed by law to be paid for the use of a public seminary in each respective county, shall be paid into the hands of the trustee thereof, any law to the contrary thereof in any wise notwithstanding.

SEC. 5. In all cases where notice and motion may be necessary under the provisions of this act, it shall be, and it is hereby made the duty of the prosecuting attorney of the proper prosecuting county, to attend to and prosecute the said motion, for which he shall be paid by the delinquent, the sum of five dollars, to be taxed with such suit. the other fees in the bill of costs.

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SEC. 6. The said several trustees shall have and detain in their hands respectively, as Allowance to a full compensation for their services in re-trustees. ceiving and paying out the money which shall and may come to their hands, six per. cent. and no more.

SEC. 7. If any county treasurer, justice of the peace, judge, sheriff, coroner or clerk, in whose hands or possession there may now be, Officers color may hereafter come, any money or monies in the nature of fines, for the use of a seminary ing to pay oin his proper county, shall neglect or refuse to ver, liable to pay over the same to the said trustee as here- impeachin before provided, he or they in addition to the penalties prescribed in the third and fifth sections hereof, shall be subject to impeachment and removal from office.

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SEC. 8. Each and every trustee appointed Trustee shall and commissioned by virtue of the provisions transmit to of this act, shall annually, within the first the Speaker twelve days of the session of the general as- of the House sembly, transmit to the Speaker of the House of Represenof Representatives. a certified list of all monies by bim received in conformity with the received. provisions of this act.

This act shall take effect from and after its promulgation.

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CHAPTER LXXIII.

AN ACT to divide the state into four Circuits, and to fix the time of holding courts.

APPROVED-January 28, 1818.

Sec. 1. BE it enacted by the General Asembly of the State of Indiana, That this state

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State divided be, and the same is hereby divided into four into four circuits. (to wit :) The counties of Knox, Suilivan, Daviess, Vigo, Dubois, Lawrence and Monroe shall compose the first circuit; the counties of Harrison, Orange, Washington, Jackson, Clark and Jefferson shall compose the second circuit; the counties of Randolph, Wayne, Franklin, Dearborn, Switzerland, Ripley and Jennings shall compose the third circuit; and the counties of Gibson, Posey, Vanderburgh, Warrick, Spencer, Perry and

Pike shall compose the fourth circuit.

when circuit courts to be holder in the Bet circuit.

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SEC. 2. That the circuit courts to be holden i. the first circuit shall be held on the days and times following, to wit : In the county of Monrue, on the first Monday in March, June and September; in the county of Lawrence, on te Thursday following the Monday in which the courts are held in Monroe; in the county of Duoois, on the second Monday in March, June and September; in the county of Daviess, on the third Monday of March, June and September; in the county of Knox. on the first Monday in April, July and October; in the county of Sullivan, on the third Monday in April, July and October; in the county of Vigo, on the fourth Monday in April, July and October; the court to be held two days in Monroe and three in Lawrence, and two weeks in the county of Knox, and one week in each of the counties of Dubois, Daviess, Vigo and Sullivan at each and every term.

SEC. 3. The circuit courts to be holden in the second circuit, shall be held on the days

and times following, to wit: In the county of When C C. Orange on the first Monday in March, June to be holden and October; in the county of Washington, on in the second the second Monday in March. June and Oc-

tober; in the county of Jackson, on the third Monday in March, June and October: in the county of Jeffer on, on the fourth Monday of

March, June and October; in the county of Clark, on the second Monday in April, August and November; in the county of Harrison, on the fourth monday in April. August and November, and in the counties of Jefferson, Harrison and Clark, the circuit courts shall sit twelve days at each term, and in the counties of Jackson, Washington and Orange shall sit six days, and the mereland disposit

SEC. 4. The circuit courts in the third circuit shali sit as follows, to wit : In the county of Franklin, on the second Monday of Feb. Courts shall ruary, May and September, and shall sit each sit in the 3d term twelve days; in the county of Wayne, on the first Monday of March. June and Octoher, in the town of Centerville, and shall sit six days at each term; in the county of Randolph, on the second Monday of March, June and October, and shall sit each term six days; in the county of Dearborn, on the third Monday of March, June and October, and shall sit at each term twelve days; in the county of Switzerland, on the first Monday of April, the fourth Monday of July, and the first Monday of November, and shall sit at each term six days; in the county of Jennings, on the second Monday of April, the third Monday of July, and the second Monday of November, and shall sit three days at each term, and in the county of Ripley, on the Thursday next subsequent to the second Monday of April, the third Monday of July, and the second Monday of November, and shall sit three days at each term.

SEC. 5. That the circuit courts, to be holden in the fourth circuit, shaft be held on the days and times following, to wit: In the When C. county of Gibson, on the first Mondays in Courts shall February, May and September, to sit two circuit. weeks; in the county of Posey, on the third Mondays of February, May and September, to sit one week; in the county of Vanderburgh, on the fourth Monday in February, May and September, to sit one week; in the county of Warrick, on the first Mondays in

March, June and October, and sit one week; in the county of Spencer, on the second Mondays in March, June and October, and sit one week; in the county of Perry, on the third Mondays in March, June and October, and oit one week; in the county of Pike, on the fourth Mondays in March, June and October, and sit one week at each term, in each year; Provided nothing in this act contained shall be so construed as to require any court to sit at any term, at any place mentioned in this act, longer than it may be necessary to dispose of or finish the business before them

Process issuing previous cation of this act made returnable to

Sec. 6. All writs, subposas, or other process, which may have issued from any of the said several courts since the last sitting thereof, or which may hereafter issue, previous to the publication of this act, shall be deemed, to the publi- taken, and are hereby made returnable to the first terms of the said several circuit courts, to be holden by virtue of this act, and all suits, the first term complaints, actions, or other proceedings, either civil or criminal, which are now pending or may hereafter be pending prior to the publication of this act, shall be taken up at the first term thereof, to be holden under this act, and the same proceedings to be had thereon in the same manner as if no alteration had been made in the time of the holding of the said courts.

This act to take effect from and after its passage.

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CHAPTER LXXIV.

AN ACT to prevent trespassing by cutting of timber.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Asembly of the State of Indiana, That if any person shall cut, box or bore, or otherwise in. Persons cutjure, any tree or sapling, on the land of any other person or persons, without his, her or their consent, every person so offending shall, partyinjured on conviction thereof, pay to the owner or owners of such land, the amount of damages so done, with costs of suit, to be collected before any court competent to try the same.

Sec. 2. If any person or persons shall take away or remove off of any other person or per gerson carrysons' land, without the consent of the owner or ing awaytimowners, their agent or agents, any timber, ber, &c to stone or other valuable article, growing thereon, he, she or they shall be adjudged guilty of a trespass, and on conviction thereof, shall forfeit and pay to the party injured treble the amount thereof, to be recovered before any court having jurisdiction thereof.

The act to prevent trespassing by cutting of timber, heretofore in force in this state, is hereby repealed: This act to take effect and be in force from the first day of September next.

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CHAPTER LXXV.

AN ACT regulating the firing of woods, prairies and other lands.

APPROVED-January 21, 1818.

Sec- 1. BE it enacted by the General Assembly of the State of Indiana, That whoever shall any time, except as is hereinafter excep- setting on ted, wilfully or negligently set on fire, or fire woods, cause to be set on fire, any woods, prairies, or &c. other grounds whatever, within this state, and heing thereof legally convicted, by oath or affirmation of one or more credible witnesses, in any court having cognizance of the same, shall pay a fine not exceeding one hundred dollars

ting trees'&c. to pay damages to the

pay damages

nor less than five dollars, to be applied for the use of county seminaries.

Damages to person injur-

sec 2. When any person or persons so offen. be paid o he ding shall thereby occasion any loss, injury or damage, to any other person or persons every person so effending shall be and is here. by declared liable to make good all damages to the person or persons injured, with costs of sait, in any court having cognizance of the same, and where any servant or servants shall offend against the tenor of this act, and being duly convicted of the same, his, her or their master or mistress shall pay the fine herein above provided, with damages and costs of prosecution.

The owner of land may burn brush thereon.

Sec. 3. Nothing in this act shall be so construed as to prevent any person or persons from setting on fire anyrubbish, leaves or brush on his, her or their farms or plantations, as often as occasion may require, if the same be done without any damage to the property of any other person or persons: Provided also, that nothing in this act shall be so construed as to prevent any person or persons from setting on fire prairies or cleared land between the first day of December and the first day of March, if the same be done without damage as aforesaid.

Sec. 4. This act shall be in force from and after its publication.

CHAPTER LXXVI.

AN ACT more effectually to prevent duel ling.

APPROVED-January 2, 1817.

Sec. 1 BE it enacted by the General Ass sembly f the State of Indiana, That all officers in and belonging to the legislative depart; ment or government, who now are, or shall be bereafter elected, before they enter upon the discharge of the duties of their aforesaid offices, shall take the following oath in addition to what is now by law directed to be ad- Oath prescrie ministered to them, that " he or they (as the bed to officase may be) have neither directly nor indirect- cers belongly gave, accepted or knowingly carried a challenge to any person or persons to fight in single combat, or otherwise with any deadly weapon, either in or out of this state since the twenty-ninth day of Jone, 1816; and that he or they, will neither directly or indirectly, give. accept or knowingly carry a challenge to any person or persons, to fight in single combat or otherwise, with any deadly weapon either in or out of this state during their continuance in office;" and upon their refusing to take the oath aforesaid, their office shall be vacated, and be filled in the same manner as if they had resigned.

SEC. 2. All officers in the executive department of government as well civil as military, and all those who shall hereafter be elected or appointed and commissioned, shall in addition to the oath already to be administered. take the oath prescribed in the first section of this act, and those who are not now directed by law to be sworn, shall also, before they enter upon the discharge of the duties of their aforesaid office, take the aforesaid oath; and upon their failing or refusing to take the aforesaid oath, their office shall be vacated, and filled in like manner as if they had resigned.

SEC. 3. All persons in the judicial department of government, and all those who shall hereafter be elected or appointed and commissioned, shall before they enter upon the discharge of the duties of their aforesaid office. take the oath prescribed in the first section of this act; and upon their failing or refusing so to do, their office shall be vacated and filled in like manner as if they had resigned.

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SEC. 4. To all and every person, who may hereafter desire to practice as an attorney or counseller at law, in any court in this state, in addition to the oath already prescribed by law to be taken by them, the oath prescribed in the first section of this act shall be administered; and upon their failing or refusing to take said oath, they shall not be permitted to practice as an attorney or counsellor at law in said court.

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SEC. 5. Each and every person, who by virtue of the provisions of this act, shall administer the oath prescibed in the first section of this law, to any person or persons, shall reged to admin- turn a certified copy of such oath, mentioning therein the name of the person who took the oath, and the nature of his office, to the clerk of the circuit court of the county where such oath was administered, within thirty days after the same shall have been administered; to be by said clerk recorded in a book to be kept for that purpose; and if any person, whose duty it shall be to certify with the requisitions of this section, shall fail to perform the same, he or they upon conviction by indictment, shall be fined in any sum not exceeding one hundred dollars nor less than ten dollars.

Sec. 6. If any person shall take a false oath under the preceding sections of this act, upon conviction thereof by indictment, he shall suffer all the pains and penalties of perjury.

Sec. 7. Hereafter, when any person shall be prosecuted for having sent or received a challenge, or having fought a duel and having killed or wounded his opponent, the bearer of the challenge or of the answer thereto, or the second or seconds, shall be exempt from any punishment or penalty therefor, and be considered, deemed and taken as competent witnesses on the said prosecution.

SEC. 8. If any citizen or person residing within this state shall go into any other state or territory, belonging to the United States, for the purpose of fighting a duel, and shall actually fight the same, shall upon conviction citizen fight thereof by indictment, be fined in any sum not ing without exceeding two thousand dollars, nor less than the state. one hundred dollars.

Sec. 9. It shall be the duty of every person having knowledge of any other person or persons, having sent or received a challenge to fight a duel or in single combat with any deadly weapon, immediately to go before some judge or justice of the peace, and upon oath give information thereof; and every person failing to give such information, upon conviction thereof, shall be fined in any sum not exceed. ing five hundred dollars, nor less than one bundred dollars.

Sec. 10 All fines assessed under this act, shall, when collected, be paid into the county treasury where the same are assessed, and be appropriated to the use of seminaries of learn. ing.

CHAPTER LXXVII.

AN ACT to encourage the killing of wolves.

APPROVED-December 24, 1816.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That every person who shall take or kill any wolf or wolves within this state and within six miles of any of the settlements thereof, shall receive the following bounty, viz: For each wolf supposed to be two months old and upwards, for killing two dollars; and for each wolf under two wolves. months old, one dollar; and the person claiming such reward shall produce the scalp or scalps with the ears entire, within one month after such wolf or wolves has or have been killed to some justice of the peace within the

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county where such claimant resides, who shall administer to such person the following oath or affirmation : You, A B, do selemnly swear or affirm that the scalp or scalps produced by you, were taken off of a wolf or wolves killed by you within this state and within six miles of some one of the settlements thereof, and within one month past, and that you believe such woif or wolves from which they were taken, were under or over two months old, as the case may be, and that you have not spared the life of any woif in your power to kill, with the design to increase the breed thereof.

or affirm tion shall be taken, shall cause the ears on all such scalps to be destroyed in his ty togive cer presence, and shall give to the person making the same, a certificate specifying the number of scalps produced, and the sum to which such person is entitled, with his name and place of

residence.

Sec. 3. The person receiving such certificate or his agent shall, within thirty days thereafter, produce the same to the clerk of the produced to circuit court of the proper county, who shall clerk and his file the same in his office, and under the seal thereof, grant to the person producing such certificate, an order on the state treasurer for the amount that may be due him under the present order provisions of this act, for which order such person shall pay the clerk twenty five cents, and such order shall be received by the collectors of land taxes in payment thereof.

Sec. 4 The collector of land taxes shall Collector to present all such orders so received by him acpresent order cording to the provisions of this act, to the auditor of public accounts, who is hereby required to issue his warrant therefor, payable at

the treasury of the state.

County commissioners Sec. 5. The commissioners of any county. may allow when they deem it expedient, may give an adadditional ditional bounty of one dollar for every wolf

Sec. 2. The justice before whom such oath

When certificate to be duty, order of clerk to be received by collector, to to auditor.

to auditor.

bounty.

sealp taken off of any wolf killed in such county, payable at the county treasury.

Sec. 6. All acts heretofore in force, grant- Repealing ing bounty for wolf scalps in this state, are clause.

hereby repealed.

I his act to take effect and be in force from and after the first day of March next.

CHAPTER LXXVIII.

AN ACT to prevent man stealing.

APPROVED-December 30, 1816.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That any person or persons hereafter, who shall forcibly What shall take or arrest, or aid or abet in forciby taking constitute or arresting any person or persons, with a design to take him, her or them out of the state, under any pretence whatsoever, without establishing his her or their claim, according to the laws of this state or of the United States, shall be guilty of man-stealing.

SEC. 2. Any person or persons being duly convicted of the crime of man stealing as is described in the preceding section of this act, for. shall for every such offence forfeit and pay a sum of not more than one thousand nor less than five bundred dollars, with costs of suit, recoverable by indictment or presentment, in any court of record having competent jurisdiction, for every person so taken or attempted to be taken out of this state, and shall moreover be rendered ineligible to hold any office of honor, profit or benefit within this state

hereafter.

Sec 3. Any person or persons of any state To whom or territory, having any claim to the service of persons any person or persons within this state, shall claiming the first go to some justice of the peace within the nother must county, or judge of the supreme or circuit apply.

penaltythere-

Who shall hear and examine testimony.

May recogn z such person to appear.

Court may grant ceruficate of service.

Penalty for giving certificate of cmancipation.

courts, and obtain a warrant, naming and deseribing the person or persons, directed to any sheriff or constable of such county, when such person or persons may be found, who shall forthwith bring such person or persons before said judge or justice of the peace, who shall hear and examine all testimony, adduced both by plaintiff and defendant; and if in the opinion of said judge or justice of the peace the plaintiff's claim be well founded, he shall recognize such person or persons so claimed, to appear at the next term of the circuit court in and for said county, where he, she or they, shall have a fair and impartial trial by a jury of said county, and if, on trial as aforesaid, the verdict and judgment shall go against such person or persons, the court shall grant the person claiming him, her or them, a certificate authorising such claimant to carry him, her or them out of the state; and should such person or persons fail to give security for his her or their appearance at said court, he, she or they shall be committed to the prison of the county until such trial be had: Provided however, no person claiming any such person or persons, shall be entitled to a certificate, authorising him to take away such person or persons until he has first paid all costs attending the trial of such claim or claims.

SEC. 4. Any person in this state who may hereafter give any person (owing service in any state or territory) a certificate or other testimonial of emancipation, shall, for every such offence, forfeit and pay any sum not exceeding one thousand dollars, recoverable by indictment or presentment, in any court in this state having competent jurisdiction, and shall, morever, be liable to action for damage by the party injured.

Sec. 5. If any person or persons in this state, shall knowingly harbor or employ any person or persons, held as a slave or slaves in any other state or territory, who have without the consent of his, her or their owner or own. Harbouring, ers come into this state, or shall encourage or encouraanysuch person or persons to desert his, her or to desert. their master or mistress, or proper owner or penaltythere owners, or shall after such owner or owners for. has established his, her or their claim or claims to such person or persons, and obtained a certificate according to law, to take him, her or them out of this state, use or attempt to use any violence, or in any way encourage such person or persons not to go with his, her or their owner or owners, every person or persons so offending, shall pay for every such offence, any sum not exceeding five hundred dollars, to be recovered by indictment or presentment, before any court having competent jurisdiction.

CHAPTER LXXIX.

AN ACT respecting the appropriation of certain fines.

APPROVED-January 1, 1817.

SEC. 1. BE it enacted by the General Assembly of the State of Indiana, That all fines assessed since the adoption of the constitution for the breach of any penal laws, or which Appropriamay hereafter be assessed for that purpose, won of fines. shall be applied for the support of county semmaries in the counties wherein such fines may be assessed. And the officers, whose duty it may be by law, to collect or receive any such fines, shall pay the same over to the treasuter of the proper county within sixty days after such fines or any of them may be so collected or received as aforesaid, under the penalty of double the amount of the fines that may remain unpaid as aforesaid, to be recovered by to said treasurer, by action of debt, in any

ESPA MALE

Duty of the urer.

court of competent jurisdiction, to the use of the semmary or seminaries of learning in such county. And it shall be the duty of the said treasurer, to open a separate account for the county treas- purpose, and give credit to the county seminary fund, for the fines paid into the treasury as aforesaid, and hold the amount subject to the order of such person or persons, body poltic or corporate, as may be hereafter authorised by law to receive the same, for the promotion of county seminaries.

CHAPTER LXXX.

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AN ACT for the incorporation of public Libraries.

APPROVED-December 17, 1816.

Public libraries may be established and how.

Sec. 1. BE it enacted by the General Asembly of the State of Indiana, That from and after the first day of March next, the inhabitants of any city, town, village or neighborhood in this state, or any part of them, whenever they have subscribed the sum of one hundred doilars for a public library, may assemble themselves for the purpose of holding an election.

SEC. 2. And if two thirds of the subscribers are present, they may proceed to choose by voice, a chairman, who shall preside at that meeting, and the clerk, who shall keep a record of the same.

Shareholders may choose 7 directors.

Sec. 3. After a chairman and clerk are chosen, the shareholders may proceed to choose by hallot seven directors, and to agree upon a name by which their library shall be known; the directors shall appoint one of their number to be president at their meetings, who shall have no other than a casting vote.

Sec. 4. A true statement of the proceed-

ings of such meeting, including the amount subscribed, and the number of subscribers present at the meeting, shall be sworn to, or Chairman or affirmed to before some justice of the peace of clerk shall the county by the chairman or the cierk, pro- swer to the vided for by the second section of this act; and their proceed it shall be the duty of such justice, to certify on ings. such statement, that it was sworn to or affirmed to before him.

Sec. 5. It shall be the duty of the recorder of the county, to record the said statement in his book of record when required.

Sec. 6. After such statement of proceedings is duly recorded according to this act, the president and directors and their successors fore- May be incor ver, shall be a body corporate and politic, to porated. be known by such name as is registered in the recorder's office. They shall be capable in law and equity to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, or any person or persons whatsoever, in all manner of suits, actions, plaints, pleas, causes and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic may or can do : Provided however, That nothing in this act contained, shall be so construed as to authorise any library company incorporated in this Shall not isk state, to issue notes or bills of credit, payable sue notes or to any person or persons on his or their order; bills of tredit or to bearer ; nor to deal in any kind of bills of exchange, notes or due bills whatever. Except the first election of directors, the annual election forever thereafter, shall be held on the first Monday in January; but if any an. must election should be omitted, the directors shall remain in power until the next annual es lection, and until successors shall be chosen.

Sec. 7. Such library or libraries, shall be go erned and regulated by such bye-laws as bye-laws. may from time to time be made by the presi-

May make

dent and directors of the same, not inconsistent with the constitution and laws of this state; who shall have power to alter, amend, abolish and renew any such bye law or bye-

laws at pleasure.

rectors,

Sec. 8. The president and directors shall surther now. have power to make a common seal, and the er of the pre- same to alter, break, change or renew at plea. sident and dis sure. They shall have power to levy a tax on the shareholders: Provided, Such tax does not exceed one dollar on each share in any one year; nothing however, in this act, shall be so construed as to prevent a majority of two thirds of the share-holders, attending at their annual meeting, from increasing such tax to any sum not exceeding five dollars on each share in any one year. They shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

Sec. 9. A majority of the directors shall be necessary to form a quorum. They shall have power to fill vacancies that may happen in their own body, and the director or directors, by them elected, shall serve until the next annual election thereafter, and until others are

elected in their stead...

donations.

Not to affect

county libra-

ries.

Sec. 10. They shall have power to receive May receive by donation, any books, monies, papers or laws or any other thing or things : Provided, such donation, or the rent or interest thereof, be applied to no other purpose than the true interest of the library on which it was bestowed, according to the true intent and meaning of this act: Provided however. That they shall not keep for a longer time than six months after receiving the same, more than the real value of five hundred dollars in land, or any other property, except books and those things appertaining to a library

> Sec. 11. This act shall not in any way or manner be so construed, as to affect any county library provided for in the constitution of

this state.

CHAPTER LXXXI.

AN ACT providing for the Incorporation of towns in the State of Indiana.

APPROVED-January 1, 1817.

WHEREAS, from the number of applications to this General Assembly from the inhabitants of different towns in this state, to become incorporated; the granting of charters to each would be productive of much loss of time to this General Assembly, and attended with considerable expense to the state in publishing them, and also, unnecessarily swell the code of laws to a lage size : therefore,

Sec. 1. BE it enacted by the General Asembly of the State of Indiana, hat hereafter, whenever the inhabitants of any town in this state wish to become incorporated, for the bet. tants of any ter regulation of their internal police, it shall town wishing be lawful for the qualified voters of such town, corporated who shall have resided six months therein, may meet & and pursued any trade or occupation during choose a presuch time, being also residents, or who shall sident & cl'k be the owner of any freehold property in said town, to assemble themselves on the first Monday in the month of March or September, at the court-house, or such other place in said town as may be most agreeable to the citizens thereof, and when so assembled, they may proceed to choose a president and clerk of the meeting, both of whom shall be sworn or affirmed by any person authorised to administer an oath in this state, faithfully to dischare the trust reposed in them as president and clerk of the meeting.

Sec. 2. The qualified voters of any town, The qualified having assembled and chosen their president voters to deand clerk as aforesaid, at the place and time cide, and if aforesaid, may proceed to decide by vote viva two thirds voce, whether they will be incorporated or may be incorpnot; and the president and clerk aforesaid, porated.

The inhabiof the meet-

shall certify under their hands and seals, after their votes are given in, the number of votes in favor, and the number against being incorporated, and if two thirds of the whole voters present, shall be in favor of being incorporated, the president and clerk shall make the same known to the voters, and shall deliver a certificate of the state of the polls to the board of trustees to be elected as herein after mentioned.

If the qualified voters vote in favor of be ing incorporated they the Monday following and elect five trus tecs.

bec. 3. Whenever the qualified voters of any town shall have decided in manner aforesaid, that they wish to become an incorporated body, they may, on the next succeeding Monday, and annually thereafter, on the same shall meet on day, choose by ballot, five free-holders as trustees, who shall hold their office for the term of one year, and until other trustees are chosen and qualified, at which first election for trustees, the president and clerk of the meeting aforesaid, to ascertain the wishes of the inhabitants of such town, shall preside, and at every succeeding election, the preceding board of trustees shall direct the manner in which the same shall be conducted.

Sec. 4. Vacancies made by death, resignation or otherwise, shall be supplied by elections in manner hereinbefore directed, by the qualified electors, on a day to be appointed by the remaining trustees; and the returns shall be made in such manner as shall be directed

by the trustees.

Sec. 5. Whenever trustees of any town shall be elected in manner as hereinbefore directed, at the first election of trustees for any town, if shall be the duty of such trustees before they proceed to make any laws or regulations by virtue of their election to office, to deposit in the clerk's office of the respective county, the certificate of the president and clerk of the first meeting of the qualified electors of such town, agreeably to the second section of this act;

and also a certificate of the president and clerk

aforesaid, of the election of the first board of trustees together with their names; and no act or ordinance of any first board of trustees shall be valid or of any force unless the provision of this act shall have been strictly pursned.

SEC. 6. It shall be the duty of the clerks of the several counties in this state to make a The clerks of record of such certificate as may be lodged in C. Courts to their offices by any board of trustees, agreea. record the ble to the provisions of this act, within three months after the same shall have been deposited in their respective offices, under the penalty of five hundred dollars, recoverable in any court of record having jurisdiction thereof; for which services they shall be allowed the same fees, to be paid by the trustees as for similar services.

SEC. 7. The board of trustees of any town. elected agreeable to the provisions of this act, The trustees shall choose a president out of their own body, elected as a-& the president and trustees aforesaid, duly e. foresaid, crelected agreeable to the provisions of this act, ated a body corporate,&c and their successors in office, shall thenceforth be considered, in law and equity, a body corporate and politic, to have continuance forever by the name and style of the president and trustees of the town and by such corporate name and style, shall be forever able and capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court or courts, place or places, or before any Judge or judges, justice or justices, or other person whatsoever, within this state or elsewhere, in all, and in all manner of suits, actions, plaints, pleas, causes, matters and demands, of whatever kind or nature they may be, in as full and effectual a manner, as any person or persons, bodies corporate and politic may or can do.

SEC. 8. And whenever any town within this state, shall be incorporated agreeable to

Trustees elected, before they pass any bye laws,

their duty.

Vacancies

frow filled.

Their powers to make laws and ordinances for the government of the police of the town.

the provisions of this act, the president and board of trustees or a majority of them, shall have full power, from time to time, and at all times, to make, ordain, establish and execute, such bye laws and ordinances in writing. not inconsistent with the laws and constitution of this state, as they shall deem useful and nece-sary for the good government of said corporation, and to prevent and remove nuisances, to restrain and prohibit gambling, to provide for lice sing, regulating or restraining ing, theatrical or other public shews or amusements, within the corporation, to regulate and establish markets, to sink and keep in repair public wells, to keep in repair all necessary streets, alleys and drains, and to pass regulations necessary for the same, agreeable to the plan of said town.

May levy & collect a tax.

SEC. 9 The president and board of trustees or a majority of them shall have full power to assess and collect annual taxes on all real property not exceeding fifty cents on every hundred dollars of assessment valuation thereof; also a poll tax on every actual citizen qualified to vote, not exceeding fifty cents each, also a reasonable tax on all other property which they may think proper subjects of taxation; also, full power and authority to appoint a lister, a treasurer, a clerk, and such other officers as they find necessary, and shall allow them what they shall deem reasonable for their services; who, when appointed, shall be governed by such rules and regulations as shall be prescribed by said president and board of trustees; and the person or persons appointed to collect any tax, imposed by virtue of any of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable with the same tax, on giving ten days previous notice of the time and place of such sale, and if no goods and chattels of the person chargeable with said tax can be found, it shall be lawful to seize and sell any lot or lots, or part or parts thereof, or so much thereof as will pay and satisfy such taxes due and in arrear, and all costs accruing on such sale, paying to the owner or owners the overplus if any.

Sec. 10. A majority of the members of any corporation shall be a quorum to transact A majority of business, but a iess number may make adjourn. trustees to ments, and shall have power to compel the attendance of absent members by imposing such a less numfine on delinquents as will answer their atten- per maycomdance; and the said board of trustees shall pel the attenbe the judges of the election of their own dance of abmembers and officers; and two thirds of the bers. members concurring, may expel any officer or member for mal-conduct or highly disorderly behaviour.

SEC. 11. When in the opinion of the board When neces. of trustees of any town, it would be a benefit sary may to such town to increase the number of trus- lect newtrustees thereof, they may order nine to be elect- tees. ed at their next annual election, and at every succeeding annual election thereafter.

SEC. 12. The said president and board of trustees shall have full power and authority to Further puwenforce their bye laws and ordinances in all board. cases whatsover: provided, that no fine, penalty or forfeiture shall be inflicted on any one person for a breach of any one of their byelaws or ordinances for more than three dollars for every time he or she shall so offend; which penalties and forfeitures may be recovered before any justice of the peace in the county, by action of debt according to law; provided, that no bye-law or ordinance shall be in force until it shall have been published in at least three of the most public places in said town for ten days: and provided also, that no bye law or act of the said president and trustees shall in any wise he repugnant to the constitution and laws of this state and of the United States.

Sec. 13. All monies arising from collection of taxes, fines, penalties and forfeitures, shall

Fines for breaches of their laws, how appropriated.

be appropriated by the said president & board of trustees, towards the erecting, improving a regulating those objects which by this act are placed under their control and jurisdiction, as likewise for defraying all such expences as may accrue or necessarilyarise out of the exest cise of the powers granted to them by this act: That the bounds of the corporation of each town shall be the building lots as recorded in the recorder's office of the respective counties; and whenever any new building lots shall be laid off edjoining any town, and the plat thereof recorded, the same shall form part of the said corporation, entitled to the same privileges, and subject to the same rules and regulations as the original corporation.

perated may adopt this oharter.

SEC. 14. Nothing in this act shall be so con-Towns here strued as to prevent the citizens of any town tofore incor- heretofore incorporated, from adopting this act of incorporation; and in case they shall do so, their former charter, so far as it may be contrary to the provisions of this act, shall be void : provided, that nothing in this act contained shall prevent any general assembly from hereafter dissolving the corporation hereby authorised, or repealing this act or any part thereof, or from making any amendments thereto that may be deemed expedient.

CHAPTER LXXXII.

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AN ACT for recording town plats.

APPROVED-January 21, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That any person or persons, his, her or their legal representatives, who may hereafter lay off any town within this state, shall, previous to the sale of any lots in such town, cause to be re-

corded in the recorder's office of the county wherein the same may lie or be laid off a correct copy of the plat of said town with the public ground 'if any there be' streets, lanes alleys with their respective widths properly marked, and the lots, regularly numbered in numerical order, and the size of the lots marked by reference to the plat of said town.

SEC 2. Every donation or grant to the public or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered to all intents and purposes as a general warranty to the said donee or donees, grantor, or grantors for his, her or their use, for the purposes intended by the donor or donors, grantor or grantors aforesaid.

Sec. 3. Every person or persons, hereafter laying off any lots in addition to any town in this state, shall previous to the sale of such lots, have the same recorded under the same regulations as is provided for recording the original plat of said town, which shall be considered as an addition thereto.

Sec. 4. Every person or persons whose duty it may be to comply with the foregoing requisitions, shall. at or before the time of offering such plat or other papers for record, acknowledge the same before the recorder of the proper county or some justice of the peace thereof, a certificate of such acknowledgement shall be (by the officer taking the same) endorsed on the back of such plat or other paper and recorded therewith and form a part of said record.

SEC. 5. Every person or persons, who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions of this act shall forfeit and pay for the use of said town, for every month that he or they may delay a compliance with the provisions aforesaid, the sum of one

hundred dollars, to be recovered by action of debt, qui tam, or otherwise, in the name of the treasurer of the county, provided, that where any town plat beretofore recorded does not fully and clearly set out and describe the size of the lots, streets, alleys and courses of the lines of said town, and when donations have been given or intended to have been given, either to the public or to individuals, or to any religious society or societies, and the same hath been neglected to have been inserted on said plat, the proprietors of such town or either of them is or are hereby empowered and requirad to make out such other description as will more fully and clearly explain their true intentions; which shall be acknowledged, certified and recorded in the same manner town plats are to be acknowledged, certified and recorded in this act.

All laws and parts of laws, relative to the recording of town plats is hereby repealed. This act to take effect from and after its publication.

CHAPTER LXXXIII.

AN ACT to provide for re-printing certain acts therein named.

APPROVED-January 29, 1818.

Sec. 1. BE it enacted by the General Assembly of the State of Indiana, That the secretary of state be, and he is bereby required to furnish the printers of the state with a copy of the following acts, to be published with the laws of the present session, viz:

An act organizing circuit courts, and for other purposes.

An act to provide for commissioning sheriffs and coroners.

An act to establish a board of county commissioners.

An act to provide for the incorporation of towns in the state of Indiana.

An act to regulate descents.

An act concerning the Auditor and Treasurer.

An act to prevent man-stealing.

An act respecting the appropriation of certain fines.

An act for the incorporation of public libraries.

An act concerning the Secretary of state.

An act to provide for the election of senators and representatives from this state to the Congress of the United States.

An act adopting the bank of Vincennnes as the state bank of Indiana, and for other pur-

poses.

An act providing for the public printing and

for other purposes.

An act to encourage the killing of wolves; but nothing in said act shall be so construed as to allow any premium for killing prairie wolves.

An act to prevent certain immoral practices.

An act to regulate the practice of physic and surgery.

An act more effectually to prevent duelling.

An act establishing a county treasury; but nothing in the aforesaid act shall be so construed as to authorise any person or persons to sell any foreign merchandize in any other county than where such person obtained a licence.

All of which acts were passed at the last session of the general assembly of this state.

SEC. 2 The printers of the laws of this state, are hereby required to re-print the before named acts with the acts of the present session, in the same manner, for which they shall receive the same compensation as for printing the acts of the present session as aforesaid.

That all acts and parts of acts heretofore in force in this state, coming within the purview of any of the acts of the present general assembly, be, and the same are hereby repealed.

This act to take effect from and after its passage.

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CHARLES AND THE TEN

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